IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 557

UNITED STATES OF AMERICA,

Appellant,

—v.—

INTERNATIONAL MINERALS AND CHEMICAL CORPORATION

CERTIFICATION FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

INDEX

THE UNITED STATES

vs.

INTERNATIONAL MINERALS & CHEMICAL CORP.

VIOLATION: 18:834—5 counts—failure to show proper classification of shipment as to contents, on shipping papers

For U.S.:

Simon L. Leis

For Defendant:

Leonard D. Slutz
900 Tri-State Building
(621-3128)

DOCKET ENTRIES

STATISTICAL RECORD	COSTS
J.S. 2 mailed	Clerk
J.S. 3 mailed	Marshal
Violation	Docket fee
Title	
Sec.	

DATE	PROCEEDINGS
3/ 2/70	INFORMATION, filed by US Atty.
3/23/70	Case called for Arraignment by J. Porter—counsel here, cause cont'd for filing of motions.
3/23/70	Motion to Dismiss filed by deft, together with Memo in support of Mot. to Dismiss.
4/24/70	Memorandum opposing Defendants Motion to Dismiss, filed.
5/11/70	Memorandum of Decision & Order filed. Certified copies issued Counsel. Mot. to Dismiss is granted, and each count in the information is dismissed.
6/ 8/70	NOTICE OF APPEAL, filed by Pltf. United States —Cert. copies issued Leonard D. Slutz, Esq. & 6th Circuit Ct. of Appeals.

11616

SYNOPSIS

The attached criminal information containing 5 counts, charges International Minerals & Chemical Corporation, defendant, a corporation, with offering for transportation dangerous articles without properly describing them on the shipping paper by name and/or classification, 49 C.F.R. 173.427.

PENALTY: Not more than $1,000 or imprisonment for not more than 1 year or both on each count, 18 U.S.C. 834

NAME: International Minerals & Chemical Corporation, 5401 Old Orchard Road, Skokie, Illinois 60076

L&E: 2-D-69-7

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

No. 11616

49 C.F.R. 173.427
18 U.S.C. 834

UNITED STATES OF AMERICA, PLAINTIFF

v.

INTERNATIONAL MINERALS & CHEMICAL CORPORATION, DEFENDANT

INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

COUNT 1

On or about April 2, 1969 at Lockland in the State and Southern District of Ohio, Western Division, International Minerals and Chemical Corporation, defendant, a corporation, a shipper of property in interstate commerce, and as such shipper subject to the regulations prescribed by United States Department of Transportation applying to shipments of explosives and other dangerous articles made by way of common, contract, and private carriers of property by public highways (49 C.F.R. 171 through 179), did offer for transport in interstate commerce from Lockland, Ohio, to Jeffersonville, Indiana, to M. C. Tank Transport, a shipment of 40,000 gallons, Sulfuric Acid and did knowingly fail to show on the shipping papers the required classification of said property, to wit, Corrosive Liquid, in violation of 49 C.F.R. 173.427. (18 U.S.C. 834).

COUNT 2

On or about April 10, 1969, at Lockland in the State and Southern District of Ohio, Western Division, Inter-

national Minerals and Chemical Corporation, defendant, a corporation, a shipper of property in interstate commerce, and as such shipper subject to the regulations prescribed by United States Department of Transportation applying to shipments of explosives and other dangerous articles made by way of common, contract, and private carriers of property by public highways (49 C.F.R. 171 through 179), did offer for transport in interstate commerce from Lockland, Ohio, to Louisville, Kentucky, to Ecoff Trucking, Inc., a shipment of 2,000 gallons, Sulfuric Acid and did knowingly fail to show on the shipping papers the required classification of said property, to wit, Corrosive Liquid, in violation of 49 C.F.R. 173.427. (18 U.S.C. 834).

COUNT 3

On or about April 15, 1969, at Lockland in the State and Southern District of Ohio, Western Division, International Minerals and Chemical Corporation, defendant, a corporation, a shipper of property in interstate commerce, and as such shipper subject to the regulations prescribed by United States Department of Transportation applying to shipments of explosives and other dangerous articles made by way of common, contract, and private carriers of property by public highways (49 C.F.R. 171 through 179), did offer for transport in interstate commerce from Lockland, Ohio, to Louisville, Kentucky, to Ecoff Trucking, Inc., a shipment of 1 truckload, Sulfuric Acid and did knowingly fail to show on the shipping papers the proper name, Sulfuric Acid, and the required classification of said property, to wit, Corrosive Liquid, in violation of 49 C.F.R. 173.427. (18 U.S.C. 834).

COUNT 4

On or about April 16, 1969, at Lockland in the State and Southern District of Ohio, Western Division, International Minerals and Chemical Corporation, defendant, a corporation, a shipper of property in interstate commerce, and as such shipper subject to the regulations

prescribed by United States Department of Transportation applying to shipments of explosives and other dangerous articles made by way of common, contract, and private carriers of property by public highways (49 C.F.R. 171 through 179), did offer for transport in interstate commerce from Lockland, Ohio, to Louisville, Kentucky, to Ecoff Trucking, Inc., a shipment of 2,000 gallons, Sulfuric Acid and did knowingly fail to show on the shipping papers the required classification of said property, to wit, Corrosive Liquid, in violation of 49 C.F.R. 173.427. (18 U.S.C. 834).

COUNT 5

On or about April 18, 1969 at Lockland in the State and Southern District of Ohio, Western Division, International Minerals and Chemical Corporation, defendant, a corporation, a shipper of property in interstate commerce, and as such shipper subject to the regulations prescribed by United States Department of Transportation applying to shipments of explosives and other dangerous articles made by way of common, contract, and private carriers of property by public highways (49 C.F.R. 171 through 179), did offer for transport in interstate commerce from Lockland, Ohio, to Indianapolis, Indiana, to Ecoff Trucking, Inc., a shipment of 4,000 gallons, HFS Acid and did knowingly fail to show on the shipping papers the proper name, to wit, Hydrofluosilicic Acid and the required classification of said property, to wit, Corrosive Liquid, in violation of 49 C.F.R. 173.427. (18 U.S.C. 834).

WILLIAM W. MILLIGAN
United States Attorney

/s/ Robert A. Steinberg
ROBERT A. STEINBERG
Assistant United States
Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

No. 11,616

49 C.F.R. 173.427
18 U.S.C. 834

UNITED STATES OF AMERICA, PLAINTIFF

v.

INTERNATIONAL MINERALS & CHEMICAL CORPORATION, DEFENDANT

MOTION TO DISMISS

The defendant moves that each count of the Information herein be dismissed on the ground that it does not state facts sufficient to constitute an offense against the United States.

A memorandum in support of this motion is attached hereto.

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/s/ Harold E. Spencer
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

No. 11,616

UNITED STATES OF AMERICA, PLAINTIFF

v.

INTERNATIONAL MINERALS & CHEMICAL CORPORATION, DEFENDANT

MEMORANDUM OF DECISION AND ORDER

There is pending for decision a motion to dismiss the five-count information which started this prosecution March 2, 1970. The motion is made pursuant to Rule 12 (b) (2) F. R. Crim. P.

Title 18 U.S.C., section 834(a) commands the Interstate Commerce Commission (hereinafter I.C.C.) to formulate regulations for safe transportation of explosives and other dangerous articles. Pursuant to that section the I.C.C. promulgated the following regulations:

> (a) Each shipper offering for transportation any dangerous article subject to the regulations in this chapter, shall describe that article on the shipping paper by the shipping name prescribed in Section 172.5 of this chapter and by the classification prescribed in Section 172.4 of this chapter, and may add a further description not inconsistent therewith. 49 C.F.R., section 173.427.

Section 834(f) of 18 U.S.C. provides:

> Whoever *knowingly* violates any such regulation shall be fined not more than $1,000 or imprisoned not more than one year, or both . . . (emphasis added).

The five counts contained in the information are bottomed on the above regulation in its relation to section 834(f) in that they charge the defendant with know-

ingly failing to show on its shipping papers the required classification, or name and classification, of the property shipped. The information does not, however, charge that the defendant knowingly violated the above regulation and such an omission, defendant contends, requires dismissal. In other words, the defendant asserts that there is a vast difference between intending not to do the act(s) which a statute commands and, on the other hand, purposely not doing such an act but with the added ingredient of a consciousness that it is illegal not to so do.

On the basis of *Boyce Motor Lines, Inc.* v. *United States*, 342 U.S. 337 (1952); *St. Johnsbury Trucking Co., Inc.* v. *United States*, 220 F. 2d 393 (1 Cir., 1955); *United States* v. *Chicago Express Inc.*, 235 F. 2d 785 (7 Cir., 1956); *United States* v. *Deer*, 131 F. Supp. 319 (E.D. Wash. N.D. 1955); *United States* v. *Chicago Express, Inc.*, 172 F. Supp. 613 (E.D. Ill., 1959), aff'd 273 F. 2d 751 (7 Cir., 1960) we find that knowledge of violating the above I.C.C. regulation is an essential element of the crime charged under 18 U.S.C. section 834(f).

Hence, failure to make such an allegation(s) in the information warrants granting defendant's motion to dismiss. *Rudin* v. *United States*, 254 F. 2d 45 (6 Cir., 1958).

Accordingly the motion is granted, and each count in the information is dismissed.

/s/ David S. Pate
Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

No. 11,616

UNITED STATES OF AMERICA, PLAINTIFF

vs.

INTERNATIONAL MINERALS & CHEMICAL CORPORATION, DEFENDANT

NOTICE OF APPEAL

Notice is hereby given that the United States of America, plaintiff in the above captioned case, hereby appeals to the United States Court of Appeals for the 6th Circuit from the final Order granting defendant's Motion to Dismiss the Five-Count Information entered on May 11, 1970.

WILLIAM W. MILLIGAN
United States Attorney

/s/ Norbert A. Nadel
NORBERT A. NADEL
Assistant U. S. Attorney

Of Counsel:

JOHN A. PULLINS

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Cincinnati, Ohio 45202

No. 20,519

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

INTERNATIONAL MINERALS & CHEMICAL CORPORATION, DEFENDANT-APPELLEE

MOTION TO CERTIFY CASE TO THE SUPREME COURT OF THE UNITED STATES

The United States of America, Appellant, moves the Court to certify the above entitled appeal to the Supreme Court of the United States, pursuant to Section 3731, Title 18, United States Code, the appeal taken being from a decision of the District Court dismissing the information against the Defendant, which decision is based upon a construction of Section 834(f), Title 18, United States Code, upon which the information is founded.

WILLIAM W. MILLIGAN
United States Attorney

GRANTED
Peck, J.

/s/ Norbert A. Nadel
NORBERT A. NADEL
Assistant U. S. Attorney

CERTIFICATE OF SERVICE

This is to certify that copies of the within Motion to Certify Case to the Supreme Court of the United States and Memorandum in Support thereof were mailed this 16th day of July, 1970 to Counsel for Defendant-Appellee, Leonard D. Slutz, Nichols, Wood, Marx & Ginter, 900 Tri-State Building, Cincinnati, Ohio 45202, and Harold E. Spencer, Belnap, McCarthy, Spencer & Hardy, 20 N. Wacker Drive, Chicago, Illinois 60606.

/s/ Norbert A. Nadel
NORBERT A. NADEL
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

No. 11,616

49 C.F.R. 173.427
18 U.S.C. 834

UNITED STATES OF AMERICA, PLAINTIFF

v.

INTERNATIONAL MINERALS & CHEMICAL CORPORATION, DEFENDANT

MEMORANDUM OF DEFENDANT IN SUPPORT OF MOTION TO DISMISS

This memorandum is submitted by defendant in support of its motion to dismiss the information filed herein.

The information filed herein purports to charge defendant with five violations of Title 18 U.S.C. § 834. That section provides that the Interstate Commerce Commission (whose functions in this connection were transferred to the Secretary of Transportation by PL 89-670, effective October 15, 1966) shall formulate regulations for the safe transportation of explosives and other dangerous articles. Sub-section (f), the statutory provision here directly involved, provides in applicable part as follows:

> Whoever knowingly violates any such regulation shall be fined not more than $1,000 or imprisoned not more than one year, or both; . . .

The regulation which defendant is charged with violating appears in 49 C.F.R. § 173.427, and presently reads as follows:

> (a) Each shipper offering for transportation any dangerous article subject to the regulations in this chapter, shall describe that article on the shipping paper by the shipping name prescribed in § 172.5

of this chapter and by the classification prescribed in § 172.4 of this chapter, and may add a further description not inconsistent therewith. Abbreviations must not be used. The total quantity by weight, volume, or as otherwise appropriate, must be shown.

. . .

The offense proscribed by the statute is "knowingly" violating an applicable regulation. The information, however, does not charge defendant with knowingly violating the regulation, but only with knowingly failing to show on the shipping papers the required classification, or name and classification, of the property shipped, the failure to state which constitutes a violation of the regulation. This distinction is an exceedingly important one since the Counts have held that proof of such facts as alleged by the United States in this information does not constitute an offense under the statute.

Count 1 of the information filed herein alleges that the defendant, International Minerals & Chemical Corporation, (IMC) offered for transport in interstate commerce from Lockland, Ohio, to Jeffersonville, Ind., by motor carrier a shipment of 40,000 gallons of sulfuric acid "and did knowingly fail to show on the shipping papers the required classification of said property, to wit, Corrosive Liquid, in violation of 49 C.F.R. 173.427. (18 U.S.C. 834)." Counts 2 and 4 are in substantially the same language. In all three instances the shipper spelled out in full on the bill of lading the name "sulfuric acid", but failed to state that it was a corrosive liquid. The requirement of the regulation that the shipping classification be shown on the bill of lading is of relatively recent origin, having been added by an amendment published in the Federal Register on September 21, 1967, to become effective December 1, 1967.

Counts 3 and 5 are in substantially the same language but allege that the shipper did knowingly fail to show on the shipping papers the proper name and the required classification of the said property. Count 3 involved sulfuric acid which was shown on the bill of lading as "Sul Acid". Count 5 involved a shipment of

hydrofluosilicic acid which was shown on the bill of lading as "HFS Acid".

It is not pertinent at this time to go into the facts which would constitute IMC's defense. It is sufficient to say only that, while technical violations of the regulation did occur, IMC is convinced that it would be able to show to the satisfaction of the court that IMC did not "knowingly" violate the regulation but, on the contrary, took a great number of steps and precautions to prevent violations of the regulations, in spite of which technical violations of the regulation did occur.

Prior to the present codification of the statute, the provision which IMC is charged with violating, which now appears in section 834 of title 18, formerly appeared in title 18 section 835. Decisions of the Supreme Court of the United States and of various Courts of Appeals and United States District Courts have specifically held that the statute in question is not of the malum prohibitum class, but is of the malum in se class, and that, in order to establish a violation of the statute, the United States must establish the existence of a specific criminal or culpable intent to violate the regulation concerned. *Boyce Motor Lines* v. *United States*, 342 U.S. 337 (1957); *St. Johnsbury Trucking Company* v. *United States*, 220 F.2d 393 (5th Cir. 1955); *United States* v. *Deer*, 131 F.Supp. 319 (E.D. Wash. 1955). In the *Boyce* case, at page 342, the Supreme Court pointed out that the statutory provision in question "punishes only those who knowingly violate the Regulation". The Supreme Court interpreted that as imposing a "requirement of the presence of culpable intent as a necessary element of the offense".

In other cases the courts have drawn a clear distinction between the statute here involved governing the transportation of hazardous materials and such regulations as pertain to the hours of service of drivers, filling out drivers' logs, etc., which latter class of cases have been held to be cases of the malum prohibitum type, in which knowingly doing the act charged is sufficient to charge an offense without alleging and proving a culpable or wrongful intent to violate the regulation con-

cerned. See, for example, *Steere Tank Lines, Inc.* v. *United States*, 330 F.2d 719, at 722-723 (5th Cir., 1964).

In light of the above cases, it is quite evident that charging the defendant with knowingly abbreviating sulfuric acid or hydrofluosilicic acid or knowingly failing to state on the bill of lading that they are a corrosive liquid, either of which could occur without a culpable or criminal intent to violate the regulation, is not the same as alleging that defendant "knowingly" violated the regulation, which, as stated, has been interpreted by the courts as requiring proof of a specific culpable or criminal intent to violate the regulation.

WHEREFORE, for the reasons herein set forth, defendant prays that each count of the information filed in this cause be dismissed for failure to state facts constituting an offense against the United States.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 557, October Term, 1970

UNITED STATES, APPELLANT

v.

INTERNATIONAL MINERALS & CHEMICAL CORPORATION

Appeal from the United States District Court for the Southern District of Ohio.

The statement with respect to jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

January 11, 1971

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 415097 475

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CITATIONS

403-849—70——1

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 557

UNITED STATES OF AMERICA, APPELLANT

v.

INTERNATIONAL MINERALS AND CHEMICAL CORPORATION

ON CERTIFICATION FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

STATEMENT RESPECTING JURISDICTION

OPINIONS BELOW

The order of the court of appeals certifying the case to this Court (Appendix A, *infra*) is not reported. The memorandum opinion and order of the district court dismissing the indictment (Appendix B, *infra*) is not yet reported.

JURISDICTION

On May 11, 1970, the district court granted a pretrial motion to dismiss the information charging noncompliance with a regulation (49 C.F.R. 173.427) requiring a shipper offering for transport any dangerous article to describe the article on the shipping papers, in violation of 18 U.S.C. 834(f). The court found that "knowledge of violating the above I.C.C.

regulation is an essential element of the crime charged under 18 U.S.C. 834(f)" and that the government failed to allege such knowledge.

On June 8, 1970, the government took an appeal to the Court of Appeals for the Sixth Circuit, but later moved to certify the case to this Court. The court of appeals, after hearing argument on the question of jurisdiction, certified the case to this Court pursuant to 18 U.S.C. 3731 (Appendix A, *infra*, p. 17). This Court docketed the case on August 14, 1970. The validity of this determination is discussed *infra*.

QUESTION PRESENTED

Whether 18 U.S.C. 834(f), imposing criminal liability upon anyone who "knowingly" violates authorized regulations dealing with the transportation of hazardous and dangerous materials, requires actual knowledge of the regulations and a specific intent to violate them.

STATUTES AND REGULATION INVOLVED

18 U.S.C. 3731 provides in part:

> An appeal may be taken by and on behalf of the United States from the district courts direct to the Supreme Court of the United States in all criminal cases in the following instances:
>
> From a decision or judgment setting aside or dismissing any indictment or information, or any count thereof, where such decision or judgment is based upon the invalidity or construction of the statute upon which the indictment or information is based.

* * * * *

An appeal may be taken by and on behalf of the United States from the district courts to a court of appeals in all criminal cases, in the following instances:

From a decision or judgment setting aside, or dismissing any indictment or information, or any count thereof except where a direct appeal to the Supreme Court of the United States is provided by this section.

* * * * *

If an appeal shall be taken pursuant to this section to any court of appeals which, in the opinion of such court, should have been taken directly to the Supreme Court of the United States, such court shall certify the case to the Supreme Court of the United States, which shall thereupon have jurisdiction to hear and determine the case to the same extent as if an appeal had been taken directly to that Court.

18 U.S.C. 834(a) provides:

The Interstate Commerce Commission shall formulate regulations for the safe transportation within the United States of explosives and other dangerous articles, including radioactive materials, etiologic agents, flammable liquids, flammable solids, oxidizing materials, corrosive liquids, compressed gases, and poisonous substances, which shall be binding upon all carriers engaged in interstate or foreign commerce which transport explosives or other dangerous articles by land, and upon all shippers making shipments of explosives or other dangerous articles via any carrier engaged in interstate or foreign commerce by land or water.

18 U.S.C. 834(f) provides:

> Whoever knowingly violates any such regulation shall be fined not more than $1,000 or imprisoned not more than one year, or both; and, if the death or bodily injury of any person results from such violation, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

49 C.F.R. 173.427 provides in part:

> (a) Each shipper offering for transportation any dangerous article subject to the regulations in this chapter, shall describe that article on the shipping paper by the shipping name prescribed in § 172.5 of this chapter * * *. Abbreviations must not be used. * * *

STATEMENT

On March 2, 1970, the United States filed a five-count information against appellee, a New York corporation which manufactures and ships various chemicals, fertilizers and other materials. Count 3 of the information reads as follows:

> On or about April 15, 1969, at Lockland, in the State and Southern District of Ohio, Western Division, International Minerals and Chemical Corporation, defendant, a corporation, a shipper of property in interstate commerce, and as such shipper subject to the regulations prescribed by United States Department of Transportation[1] applying to shipments of ex-

[1] The functions, duties, and powers of the Interstate Commerce Commission to regulate transportation of hazardous materials were transferred to the Secretary of Transportation in section 6(e)(4) of the Department of Transportation Act, 80 Stat. 937, 49 U.S.C. (Supp. V) 1655(e)(4).

plosives and other dangerous articles made by way of common, contract, and private carriers of property by public highways (49 C.F.R. 171 through 179), did offer for transport in interstate commerce from Lockland, Ohio, to Louisville, Kentucky, to Ecoff Trucking, Inc., a shipment of 1 truckload, Sulfuric Acid and did knowingly fail to show on the shipping papers the proper name, Sulfuric Acid, and the required classification of said property, to wit, Corrosive Liquid, in violation of 49 C.F.R. 173.427 (18 U.S.C. 834).

Counts 1, 2, 4, and 5 are substantially identical to Count 3, except that some counts allege that the defendant "did knowingly fail to show on the shipping papers" only the required classification.

Appellee filed a motion to dismiss the information pursuant to Rule 12(b)(2), F.R. Crim. P. While admitting to "technical violations of the regulations" (D. Mem. p. 3),[2] it contended that the allegation in the information of "knowing failure" to show the proper classification on shipping papers failed to satisfy the requirement of 18 U.S.C. 834(f) that a "knowing violation" of the "regulation" be shown. In granting the motion, the district court relied on various precedents discussed *infra,* including this Court's decision in *Boyce Motor Lines* v. *United States,* 342 U.S. 337. It held that knowledge of the regulation, in addition to deliberate performance of acts constituting a violation of the regulation, "is an essential element

[2] "D. Mem." refers to appellee's memorandum in support of its motion to dismiss in the district court, included in the record filed with the Clerk.

of the crime charged." The information was dismissed for failure to allege such knowledge. Appendix B, *infra*, pp. 19–21.

THE QUESTION OF JURISDICTION

Although the United States initially took an appeal in this case to the court of appeals, on further analysis it became evident that the ruling of the trial judge was founded upon a construction of the phrase in the underlying statute, 18 U.S.C. 834(f), which reads: "knowingly violates * * * such regulation." The decision is therefore properly appealable directly to this Court pursuant to the first paragraph of 18 U.S.C. 3731, *supra*, p. 2.

In *United States* v. *Mersky*, 361 U.S. 431, the dismissal of an indictment on the basis of a construction of regulations promulgated pursuant to an import statute was held to be appealable only to this Court, since the regulations, by defining the prohibited conduct, directly amplified the statute. The district court's decision in *Mersky* construing the regulations was thus found to be in effect a decision construing the statute.[3] Here, while the prohibited conduct also is defined in the regulations, the trial court's decision rests on an interpretation of specific language in the statute, rather than on a construction of the implementing regula-

[3] Compare *United States* v. *Weller*, No. 77, this Term (motion to remand denied and question of jurisdiction postponed to the merits, 397 U.S. 985), where the regulations construed did not define the prohibited conduct; the government there argues that the *Mersky* rationale does not apply and the case, which was initially appealed to this Court, should be certified to the court of appeals. Brief for United States, pp. 13–21.

tions. Accordingly, the jurisdiction of this Court is established without resort to the *Mersky* rationale.

THE QUESTION IS SUBSTANTIAL

1. The district court's holding—that the statutory language, "knowingly violates * * * such regulation," requires an allegation and proof of a specific intent to violate the terms of a known regulation—is at odds with the fundamental concept in our jurisprudence that criminal culpability need not depend on actual knowledge of the law. As this Court has recognized, the rule that "ignorance of the law will not excuse" is "deep in our law." *Lambert* v. *California,* 355 U.S. 225, 228. It is, of course, a principle of general application that knowledge of the provisions or existence of a statute is not required for the most serious of crimes, such as murder, bank robbery, or kidnapping. The deliberate (*i.e.,* knowing) commission of prohibited acts constitutes the crime and creates criminal liability, irrespective of whether the person who acts is aware of the specific statute which punishes his conduct.[4]

[4] *Lambert* v. *California*, *supra*, represents an exception. There the Court held invalid a city ordinance purporting to impose criminal penalties on any "convicted person" who failed to register himself as such after remaining more than five days in Los Angeles or coming more than five times per month into the city. The Court held that the ordinance was unconstitutional as applied to someone who did not have actual knowledge of its provisions, finding that the principle that every man is required to know the law could not be extended to the situation in that case of "conduct that is wholly passive" and of a type which would not "alert the doer to the consequences of his deed." 355 U.S. at 228. *Lambert* is distinguishable from the instant case since (1) the conduct prohibited by the safe

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The decision of the district court to the contrary is based on a misinterpretation of this Court's decision in *Boyce Motor Lines, Inc.* v. *United States,* 342 U.S. 337. In *Boyce,* the petitioner was charged, under former 18 U.S.C. (1940 ed.) 235 (which is identical insofar as here pertinent to the present statute), with violating a regulation providing that drivers of motor vehicles transporting any explosive or inflammable substance "shall avoid, so far as practicable, and, where feasible, by prearrangement of routes, driving into or through congested thoroughfares * * *." The indictment there alleged that petitioner routed its trucks, carrying an inflammable liquid, into Holland Tunnel, notwithstanding the availability of more practical routes, and that petitioner "well knew" this to be in violation of the applicable regulation. The precise question presented in *Boyce,* which the Court answered in the negative, was whether the regulation was void for vagueness. The *scienter* element of the statute was not directly drawn into question. In its opinion, however, the Court stated as part of its rationale (342 U.S. at 342) (footnotes omitted):

> The statute punishes only those who knowingly violate the Regulation. This requirement of the presence of culpable intent as a necessary element of the offense does much to destroy any force in the argument that application of the Regulation would be so unfair that it must be held invalid. That is evident from a considera-

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transportation regulation is not a failure to act but misfeasance and (2), as shown *infra,* persons doing business as truckers have an affirmative obligation to acquaint themselves with the regulations applicable to their business.

> tion of the effect of the requirement in this case. To sustain a conviction, the Government not only must prove that petitioner could have taken another route which was both commercially practicable and appreciably safer (in its avoidance of crowded thoroughfares, etc.) than the one it did follow. It must also be shown that petitioner knew that there was such a practicable, safer route and yet deliberately took the more dangerous route through the tunnel, or that petitioner willfully neglected to exercise its duty under the Regulation to inquire into the availability of such an alternative route.

Also noted was the fact that, by regulation (49 C.F.R. 197.02 [5]), the officers, agents and employees of every motor carrier concerned with the transportation of explosives and dangerous articles are required to "become conversant" with the above and other regulations applying to such transportation.[6] 342 U.S. at 342 n. 15.

As clearly reflected by the quoted language, the Court in *Boyce* was not saying that specific knowledge of the existence or terms of the regulations—*i.e.*, knowledge of the law—had to be proved. Rather, the decision focused on the traditional requirement that the defendant have made a conscious choice to do the act constituting the substantive violation, something that

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[5] Currently 49 C.F.R. 397.02.

[6] In this connection, we point out that the provisions of the present statute, 18 U.S.C. 834(d), which require publication of penal regulations and a subsequent ninety-day waiting period before they become effective, clearly provide ample notice. Contrast *Lambert* v. *California*, 355 U.S. 225, discussed *supra*, n. 4.

Boyce did only if it knew the fact that another route was available. Mr. Justice Jackson, dissenting in *Boyce* as to the vagueness issue, indicated a similar interpretation, commenting that he did not "suppose the Court intend[ed] to suggest that if petitioner knew nothing of the existence of such a regulation its ignorance would constitute a defense." The Justice observed that typically "the knowledge requisite to knowing violation of a statute is factual knowledge as distinguished from knowledge of the law." 342 U.S. at 345. See also *United States* v. *Illinois Central Railroad,* 303 U.S. 239; *Morissette* v. *United States,* 342 U.S. 246, 270–271.

This is precisely the point to be made here. Indeed, the Tenth Circuit recently so construed the present statute. In *Texas-Oklahoma Express Inc.* v. *United States,* C.A. 10, No. 9–70, decided July 27, 1970, involving a conviction under 18 U.S.C. 834(f) for knowingly violating a regulation forbidding motor vehicles transporting certain classes of explosives from being "left unattended at any time during the course of transportation," the court (after analyzing *Boyce* and the cases relied on below) concluded (slip opinion, p. 9):

> Here * * * it is necessary to show but one step—that the trailer was intentionally left unattended, and not two steps—that a violation of the Regulation was intended and the truck was left unattended. * * *

See also *United States* v. *E. Brooke Matlack, Inc.,* 149 F. Supp. 814, 821 (D. Md.); cf. *Steere Tank Lines,*

Inc. v. *United States,* 330 F. 2d 719 (C.A. 5), and cases cited.[7]

2. This interpretation is consistent with the legislative history of 18 U.S.C. 834, which was enacted in response to the First Circuit's decision in *St. Johnsbury Trucking Co.* v. *United States,* 220 F. 2d 393. In that case, a corporation had been prosecuted for failing properly to placard its truck with "danger" signs, as required by I.C.C. regulation (49 C.F.R. (1956 Rev.) 77.823), due to an error by a rating clerk in labeling the shipping papers. The district court held that former 18 U.S.C. (1940 ed.) 235 required no element of a criminal intent to violate the regulation; it was enough to make out an offense by showing that the wrongdoer had knowledge of the dangerous nature of the commodity and its volume.[8] The court of appeals reversed, however, in *St. Johnsbury,* indicating that culpable intent to evade the regulation was an element of the offense.[9]

Senator Magnuson accordingly introduced a bill to amend the statute in April 1957, proposing that the

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[7] The Seventh Circuit in *United States* v. *Chicago Express, Inc.*, 235 F. 2d 785, reversing a conviction on the ground that the judge had failed to charge on intent, indicated that it viewed knowledge of the regulation as an element of the offense. In our view this aspect of the decision is erroneous.

[8] The regulation there under consideration made it an offense to transport in an unmarked vehicle specified explosives weighing more than a certain number of pounds gross weight (49 C.F.R. (1956 Rev.) 77.823).

[9] While the case does not actually hold that knowledge of the regulations, which was shown to exist in that case, is necessary to criminal intent, it was subsequently so interpreted (*infra*, pp. 12–13).

phrase "whoever knowingly" be deleted and there be substituted the words "[whoever] being aware that the Interstate Commerce Commission has formulated regulations for the safe transportation of explosives and other dangerous articles." 105 Congressional Record 6755–6756. The written "justification" for this change (reprinted at 105 Congressional Record 6755–6757) discussed the opinions in *Boyce Motor Lines, Inc., supra,* and interpreted *St. Johnsbury Trucking Co., supra,* as requiring as an element of the offense knowledge of the specific provisions of an I.C.C. regulation. It noted that an earlier report of the Senate Interstate and Foreign Commerce Committee (S. Rep. No. 901, 86th Congress, 1st Session) had rejected the I.C.C.'s recommendation to eliminate, without substitution, the term "knowingly," and make the offense a type of "public welfare" crime (as discussed in *Morissette* v. *United States,* 342 U.S. 246, 252–260), in which no element of *scienter* need be shown and the commission of the act alone suffices for criminal responsibility. While admitting that, because of the "added peril inherent in the transportation of the commodities concerned, statutory creation of an absolute liability does not seem unreasonable," the "justification" elected to follow language recommended by the Senate Committee, *supra,* as a compromise.[10]

The intended thrust of the amendment was to impose criminal liability where it could be shown that

[10] The "justification" noted that the I.C.C. regarded the proposal as a "substantial improvement over the present provisions." 105 Cong. Rec. 6756–6757.

there was general knowledge of the existence of regulations covering the transportation of explosives and other dangerous substances; however, there would be no need to show knowledge of specific provisions of a violated regulation. On September 9, 1957, Senator Magnuson's bill passed the Senate (105 Cong. Rec. 18739–18740); it was referred to the House Committee on the Judiciary on September 11, 1957, as an amendment to (renumbered) Section 834(f). The staff memorandum of the House Committee (reprinted in the Committee Report, H. Rep. No. 1975, 86th Cong., 2d Sess., pp. 14–19) urged deletion of the Senate amendment, taking the position that, notwithstanding the suggestion in *St. Johnsbury Trucking,* the then existing statute, properly construed, required proof of *scienter* not in terms of knowledge of the applicable law but only in the sense that the prohibited conduct be done knowingly rather than inadvertently. The memorandum stated (H. Rep. No. 1975, 86th Cong., 2d Sess., p. 17):

> There is * * * reason to believe that the [Senate] bill would impose on the Government a more stringent requirement of proof than does the present law as construed by the Supreme Court, though an opinion of a very able lower appellate court judge,[11] which has no doubt had considerable impact * * *, read the statute as casting an even heavier burden on the Government. * * *

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[11] Referring to Judge Magruder's concurring opinion in *St. Johnsbury Trucking.*

The House Committee determined to strike out the Senate amendment and re-substitute the term "knowingly." The Report stated (*id.* at p. 2):

> The present Transportation and Explosives Act requires that a violation "knowingly" be committed before penalty may be inflicted for such violation. Under the present law there is judicial pronouncement as to the standards of conduct that make a violation a "knowing" violation. The instant bill would change substantially the quantum of proof necessary to prove a violation since it provides that "any person who being aware that the Interstate Commerce Commission has formulated regulations for the safe transportation of explosives and other dangerous articles" is guilty if there is a noncompliance with the regulations. Such language may well create an absolute liability for violation. * * * Since the penalties prescribed for violation of the Explosives Act are substantial and since proof required to sustain a charge of violation of such regulations under the bill would require little more than proof that the violation occurred, it is the considered opinion of the committee that such a substantial departure in present law is not warranted. It is the purpose of this amendment to retain the present law by providing that a person must "knowingly" violate the regulations.

As so amended by the Judiciary Committee the bill passed the House on August 23, 1960. 106 Cong. Rec. 17261–17262. The Senate concurred in the House amend-

ments on August 26, 1960 (106 Cong. Rec. 17789), and the bill in its present form was subsequently enacted.

In this context, it is clear that enactment of the present statute was by no means an endorsement by Congress of the interpretation of the term "knowingly" suggested in *St. Johnsbury Trucking*. Rather, the intent as reflected in the House Committee Report phrase "to retain the present law", was simply to preserve the existing statutory language as requiring knowing performance of the acts constituting a violation (an element that the Committee's report, unlike the memorandum of its staff, thought was eliminated by the Magnuson proposal). There is no reason to believe that the Committee did not accept the view of its staff that, notwithstanding *St. Johnsbury Trucking*, knowledge that a regulation was being violated was not required. This is wholly consistent with the view we urge here—that 18 U.S.C. 834(f) does indeed demand proof of *scienter* (as opposed to being *malum prohibitum* legislation of the sort discussed in *Morissette*), but that the knowledge requirement relates, as is traditional in our law, to the facts or conduct involved and not to the legal provisions that prohibit that conduct. Since the information in this case clearly alleged, as to all counts, that the appellee "did knowingly" do the acts which constitute violations of the applicable regulation, the district judge erred in granting the motion to dismiss.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that probable jurisdiction should be noted.

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SEPTEMBER 1970.

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Cincinnati, Ohio 45202

No. 20,519

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

v.

INTERNATIONAL MINERALS & CHEMICAL CORPORATION, DEFENDANT-APPELLEE

MOTION TO CERTIFY CASE TO THE SUPREME COURT OF THE UNITED STATES

The United States of America, Appellant, moves the Court to certify the above entitled appeal to the Supreme Court of the United States, pursuant to Section 3731, Title 18, United States Code, the appeal taken being from a decision of the District Court dismissing the information against the Defendant, which decision is based upon a construction of Section 834 (f), Title 18, United States Code, upon which the information is founded.

WILLIAM W. MILLIGAN,
United States Attorney.
NORBERT A. NADEL,
Assistant U.S. Attorney.

Granted: PECK, J.

APPENDIX B

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

No. 11,616

UNITED STATES OF AMERICA, PLAINTIFF

v

INTERNATIONAL MINERALS & CHEMICAL CORPORATION, DEFENDANT

MEMORANDUM OF DECISION AND ORDER

There is pending for decision a motion to dismiss the five-count information which started this prosecution March 2, 1970. The motion is made pursuant to Rule 12 (b) (2) F. R. Crim. P.

Title 18 U.S.C., section 834(a) commands the Interstate Commerce Commission (hereinafter I.C.C.) to formulate regulations for safe transportation of explosives and other dangerous articles. Pursuant to that section the I.C.C. promulgated the following regulations:

> (A) Each shipper offering for transportation any dangerous article subject to the regulations in this chapter, shall describe that article on the shipping paper by the shipping name prescribed in Section 172.5 of this chapter and by the classification prescribed in Section 172.4 of this chapter, and may add a further description not inconsistent therewith. 49 C.F.R., section 173.427.

Section 834(f) of 18 U.S.C. provides:

> Whoever *knowingly* violates any such regulation shall be fined not more than $1,000 or imprisoned not more than one year, or both... (emphasis added).

The five counts contained in the information are bottomed on the above regulation in its relation to section 834(f) in that they charge the defendant with knowingly failing to show on its shipping papers the required classification, or name and classification, of the property shipped. The information does not, however, charge that the defendant knowingly violated the above regulation and such an omission, defendant contends, requires dismissal. In other words, the defendant asserts that there is a vast difference between intending not to do the act(s) which a statute commands and, on the other hand, purposely not doing such an act but with the added ingredient of a consciousness that it is illegal not to so do.

On the basis of *Boyce Motor Lines, Inc.* v. *United States,* 342 U.S. 337 (1952); *St. Johnsbury Trucking Co., Inc.,* v. *United States,* 220 F. 2d 393 (1 Cir., 1955); *United States* v. *Chicago Express Inc.,* 235 F. 2d 785 (7 Cir., 1956); *United States* v. *Deer,* 131 F. Supp. 319 (E.D. Wash. N.D. 1955); *United States* v. *Chicago Express, Inc.,* 172 F. Supp. 613 (E.D. Ill., 1959), aff'd 273 F. 2d 751 (7 Cir., 1960) we find that knowledge of violating the above I.C.C. regulation is an essential element of the crime charged under 18 U.S.C. section 834(f).

Hence, failure to make such an allegation(s) in the information warrants granting defendant's motion to dismiss. *Rudin* v. *United States,* 254 F. 2d 45 (6 Cir., 1958).

Accordingly the motion is granted, and each count in the information is dismissed.

DAVID S. PATE, *Judge.*

A True Copy of the Original Filed May 11, 1970.

Attest:

JOHN D. LYTER, *Clerk.*

By ROBERT S. KING, *Deputy.*

Certified May 11, 1970.

U.S. GOVERNMENT PRINTING OFFICE: 1970

No. 557

[illegible]

In the

Supreme Court of the United States

October Term, 1970

UNITED STATES OF AMERICA,

Appellant,

v.

INTERNATIONAL MINERALS & CHEMICAL CORPORATION,

Appellee.

ON CERTIFICATION FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MOTION TO AFFIRM

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No. 557

UNITED STATES OF AMERICA,
Appellant.

v.

INTERNATIONAL MINERALS & CHEMICAL CORPORATION,
Appellee.

ON CERTIFICATION FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MOTION TO AFFIRM

Appellee, International Minerals & Chemical Corporation (IMC), defendant in the district court, respectfully moves, pursuant to rule 16 of the rules of this Court, that the judgment of the district court granting appellee's motion to dismiss the information be affirmed on the ground that the question presented by this appeal is so lacking in substance as not to warrant further briefing or oral argument.

QUESTION PRESENTED

Whether an offense against the United States under 18 U.S.C. §834(f), which imposes criminal liability on anyone who "knowingly violates" regulations governing the transportation of hazardous materials, is sufficiently charged by a criminal information which does not allege that defendant knowingly violated the regulations but only that defendant knowingly did certain acts, or failed to do certain acts, in violation of such regulations.

STATUTES AND REGULATION INVOLVED

Title 18 U.S.C. sections 834(a) and 834(f) are set forth in the jurisdictional statement (pp. 3-4).

The regulation involved (49 C.F.R. 173.427(a)) was quoted in part in the jurisdictional statement (p. 4) but a relevant portion was omitted. In pertinent part, the regulation reads as follows:

> (a) Each shipper offering for transportation any dangerous article subject to the regulations in this chapter, shall describe that article on the shipping paper by the shipping name prescribed in § 172.5 of this chapter and by the classification prescribed in § 172.4 of this chapter, and may add a further description not inconsistent therewith. Abbreviations must not be used. . . .

STATEMENT

On March 2, 1970, the United States filed a five-count information against appellee, purportedly under 18 U.S.C. §834(f), alleging that appellee knowingly failed to show on the shipping papers covering four shipments of sulfuric acid (counts 1-4) and one shipment of hydrofluosilicic acid (count 5), all in tank truck quantities, from its plant at Lockland, Ohio, the required shipping classification, to wit, a corrosive liquid (counts 1, 2, and 4) or the proper name

and required shipping classification (counts 3 and 5). The bills of lading involved in counts 1, 2, and 4 showed the proper name in full, to wit, sulfuric acid. The bill of lading involved in count 3 described the commodity as Sul. Acid. The bill of lading in count 5 described the commodity as HFS Acid. None of the bills of lading showed the required shipping classification, a corrosive liquid. The requirement that the shipping papers show the required shipping classification is of relatively recent origin, having been added to the regulation by an amendment published in the Federal Register on September 21, 1967, to become effective December 1, 1967. 32 F.R. No. 183, p. 13324. Prior to that date, such information was not required to be shown on the shipping papers.

The information did not charge appellee with "knowingly" violating the regulation, and appellee, believing that it did not knowingly violate such regulation, filed in the district court a motion to dismiss the information on the ground that it did not state facts sufficient to constitute an offense against the United States under 18 U.S.C. §834(f). After consideration of memoranda submitted by the parties in support of their respective positions, the court, the Honorable David S. Porter, entered a judgment order dismissing each count of the information. (J.S. 19-21).

NO SUBSTANTIAL QUESTION IS PRESENTED BY THIS APPEAL

This appeal presents but a single simple question: Was the information sufficient to allege an offense against the United States under 18 U.S.C. §834(f)? The Government's attempt to convert this case into one involving profound questions relating to the construction and application of the terms of the statute and the amount of proof necessary

to sustain a conviction thereunder have no basis. Failure to understand the limited nature of the question presented colors the Government's entire presentation. Most of what is said in the jurisdictional statement is simply not relevant to the simple question here presented.

The offense proscribed by 18 U.S.C. §834(f) is "knowingly" violating an applicable regulation. The information filed herein did not charge defendant with knowingly violating the regulation, but only with knowingly failing to show on the shipping papers the required classification or name and classification of the property shipped. Appellant contends this is sufficient to charge a crime under 18 U.S.C. §834(f), saying (J.S. 15):

> Since the information in this case clearly alleged, as to all counts, that the appellee "did knowingly" do the acts which constitute violations of the applicable regulation, the district judge erred in granting the motion to dismiss.

It would seem to be obvious, however, from the provisions of the statute, that, under 18 U.S.C. §834(f), the proscribed offense is the knowing violation of a regulation, not the knowing doing of an act, or knowing failure to take some action, which happens to be in violation of the regulation; and this, indeed, has been the settled construction of the statute.

Prior to the present codification of the statute, the statutory provision here involved, 18 U.S.C. §834(f), appeared in 18 U.S.C. §835. Construing that specific provision, in *Boyce Motor Lines* v. *United States*, 342 U.S. 337, 342, 343, this court pointed out that the provision in question "punishes only those who knowingly violate the Regulation." Following the decision in that case, the lower courts have, over a period of more than 15 years, held that actual knowledge of the regulation is an essential

element of the crime. *St. Johnsbury Trucking Company* v. *United States,* 220 F.2d 393, 397 (1st Cir., 1955); *United States* v. *Chicago Express,* 235 F.2d 785, 786 (7th Cir., 1956); *United States* v. *Deer,* 131 F.Supp. 319, 320 (E.D., Wash., 1955).

The Government is incorrect when it says (J.S. 7) that the district court held that the statute "requires an allegation and proof of a specific intent to violate the terms of a known regulation." The district court did not so hold. Applying the settled construction of the law, the district court simply held that "knowledge of violating the above I.C.C. regulation is an essential element of the crime charged under 18 U.S.C. §834(f)." (J.S. 20). Accordingly, since the Government did not charge appellee with "knowingly" violating the regulation, the court dismissed the information.

The cases cited by appellant are not in point. The decision of the Court of Appeals for the Tenth Circuit in *Texas-Oklahoma Express, Inc.* v. *United States,* 429 F.2d 100 (10th Cir., 1970) (J.S. 10) was concerned with whether the Government's proof was sufficient to sustain a conviction for knowingly violating a regulation. The decision was not concerned with the sufficiency of the information and it did not hold, as implied by the Government, that knowledge of the regulation was not an essential element of the crime. On the contrary, the court pointed out that defendants were "charged with knowledge of the Regulation in question" and admitted "actual knowledge" thereof. (*id.,* p. 104)

The decisions in *United States* v. *E. Brooke Matlack, Inc.,* 149 F.Supp. 814 (D. Md., 1957) and *Steere Tank Lines, Inc.* v. *United States,* 330 F.2d 719 (5th Cir., 1964) (J.S. 10-11) are readily distinguishable. Both involved a

different statute and, in each case, the court held that the offense involved was of the malum prohibitum or public welfare type. In each case the court considered and distinguished *Boyce* and *St. Johnsbury*.

Appellant's argument (J.S. 7) that dismissal of the information is at odds with the fundamental concept in our jurisprudence, that "ignorance of the law will not excuse", is not apposite in the present case. That argument has no applicability in the case of a statutory crime where the legislature, in defining the crime, makes knowledge of the regulation an essential element of the crime. As Judge Magruder so clearly put it, in his concurring opinion in *St. Johnsbury* (220 F.2d at 398):

> If a statute provides that it shall be an offense "knowingly" to sell adulterated milk, the offense is complete if the defendant sells what he knows to be adulterated milk, even though he does not know of the existence of the criminal statute, on the time-honored principle of the criminal law that ignorance of the law is no excuse. But where a statute provides, as does 18 U.S.C. § 835, that whoever knowingly violates a regulation of the Interstate Commerce Commission shall be guilty of an offense, it would seem that a person could not knowingly violate a regulation unless he knows of the terms of the regulation and knows that what he is doing is contrary to the regulation. Here again the definition of the offense is within the control and discretion of the legislature.

The Government's references to the legislative history have no relevance to the question here presented: the sufficiency of the information to charge a crime under 18 U.S.C. §834(f). The courts have consistently held that, under that section, knowledge of the regulation is an essential element of the crime. The Government has cited no authority to the contrary. Furthermore, the terms of the statute are clear and unambiguous, so there is no reason

to resort to legislative history in any event. *United States* v. *Standard Brewery,* 251 U.S. 210, 217; *United States* v. *Missouri Pacific R. Co.,* 278 U.S. 269, 278.

But even if the legislative history were relevant to the question here presented, it simply points up the weakness of the position taken by the Government. As appellant shows (J.S. 11-15), after the decision of this court in *Boyce* and the decision of the Court of Appeals for the First Circuit in *St. Johnsbury,* both of which involved the same statutory provision as is here involved, a bill was introduced in the Senate to amend the statute to require only that the defendant know that the Commission had established regulations for the transportation of dangerous articles. But the House of Representatives refused to accede to the Senate bill, and amended it to retain the existing language, specifically stating (J.S. 14):

> The present Transportation and Explosives Act requires that a violation "knowingly" be committed before penalty may be inflicted for such violation. Under the present law there is judicial pronouncement as to the standards of conduct that make a violation a "knowing" violation . . . It is the purpose of this amendment to retain the present law by providing that a person must "knowingly" violate the regulations.

Such language could hardly be more clear. The Government's suggestion that Congress did not change the statute because it thought this Court and the Court of Appeals for the First Circuit had misconstrued it, though ingenious, does not comport with the facts.

An indictment or information must allege all of the essential elements of the crime charged. *United States* v. *Debrow,* 346 U.S. 375, 376; *United States* v. *Seeger,* 303 F.2d 478, 482 (2nd Cir., 1962); *Clay* v. *United States,* 218 F.2d 483, 486 (5th Cir., 1955); *United States* v. *Tornabene,* 222 F.2d 875, 878 (3rd Cir., 1955); Rule 7(c),

18 U.S.C. Where a statute, by its express terms, makes knowledge of the regulation claimed to be violated an essential element of the crime, the failure to allege that defendant "knowingly" violated the regulation is fatally defective. *United States* v. *Deer,* 131 F.Supp. 319, 320 (E.D. Wash., 1955); see also *United States* v. *Valenti,* 74 F.Supp. 718, 720 (W.D. Pa., 1947). Since the information here involved made no such allegation, it is clear beyond the slightest doubt that it was properly dismissed by the district court.

CONCLUSION

For the reasons above set forth, it is respectfully submitted that this appeal presents no substantial question warranting further briefing and argument. The judgment of the district court dismissing the information should be affirmed.

Respectfully submitted,

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October, 1970

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OCTOBER TERM, 1970

No. 557

UNITED STATES OF AMERICA, APPELLANT

v.

INTERNATIONAL MINERALS AND CHEMICAL CORPORATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

BRIEF FOR THE UNITED STATES

OPINION BELOW

The memorandum of decision and order of the district court (App. 7–8) is not yet reported.

JURISDICTION

On May 11, 1970, the United States District Court for the Southern District of Ohio granted appellee's pretrial motion to dismiss the five-count information charging violations of 18 U.S.C. 834 by noncompliance with a regulation, 49 C.F.R. 173.427, requiring a shipper offering for transport any dangerous article to describe the article on the shipping papers by designated name and classification. The Court found that "knowledge of violating the above I.C.C. regulation is

an essential element of the crime charged" and that the government failed to allege such knowledge (App. 7–8).

On June 8, 1970, the government filed a notice of appeal to the United States Court of Appeals for the Sixth Circuit pursuant to 18 U.S.C. 3731. Upon further consideration, the government later moved to certify the case to this Court, as that Section provides, on the ground that the appeal should have been taken directly to this Court. The court of appeals did certify the appeal and this Court noted probable jurisdiction on January 11, 1971 (App. 15).

This Court has jurisdiction over this case pursuant to the first paragraph of 18 U.S.C. 3731, since the district court's dismissal of the information was based upon its construction of the phrase "knowingly violates" in the underlying statute, 18 U.S.C. 834. *United States* v. *Fabrizio*, 385 U.S. 263.[1]

QUESTION PRESENTED

Whether 18 U.S.C. 834, imposing criminal liability upon anyone who "knowingly violates" authorized regulations dealing with the transportation of hazardous and dangerous materials, requires actual knowledge of the regulations and a specific intent to violate them.

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[1] The 1970 amendment to the Criminal Appeals Act (18 U.S.C. 3731), providing that all appeals from dismissals of indictments or informations must be taken to the courts of appeals, 84 Stat. 1890, is not applicable to this case since the amendment is effective only as to cases begun in the district courts prior to its effective date, January 2, 1971. See *United States* v. *Jorn*, No. 19, this Term, decided January 25, 1971, slip op. nn. 1, 6.

STATUTES AND REGULATION INVOLVED

18 U.S.C. 834(a) provides:

> The Interstate Commerce Commission shall formulate regulations for the safe transportation within the United States of explosives and other dangerous articles. including radioactive materials, etiologic agents, flammable liquids, flammable solids, oxidizing materials, corrosive liquids, compressed gases, and poisonous substances, which shall be binding upon all carriers engaged in interstate or foreign commerce which transport explosives or other dangerous articles by land, and upon all shippers making shipments of explosives or other dangerous articles via any carrier engaged in interstate or foreign commerce by land or water.

18 U.S.C. 834(f) provides:

> Whoever knowingly violates any such regulation shall be fined not more than $1,000 or imprisoned not more than one year, or both; and, if the death or bodily injury of any person results from such violation, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

49 C.F.R. 173.427 provides in part:

> (a) Each shipper offering for transportation any dangerous article subject to the regulations in this chapter, shall describe that article on the shipping paper by the shipping name prescribed in § 172.5 of this chapter and by the classification prescribed in § 172.4 of this chapter * * *. Abbreviations must not be used. * * *

STATEMENT

On March 2, 1970, the United States filed a five-count information against appellee (a New York corporation which manufactures and ships various chemicals, fertilizers and other materials) alleging violations of the Transportation of Explosives Act, specifically 18 U.S.C. 834 (App. 3–5). A typical count (count 3) charged (App. 4) that:

> On or about April 15, 1969, at Lockland in the State and Southern District of Ohio, Western Division, International Minerals and Chemical Corporation, defendant, a corporation, a shipper of property in interstate commerce, and as such shipper subject to the regulations prescribed by United States Department of Transportation [2] applying to shipments of explosives and other dangerous articles made by way of common, contract, and private carriers of property by public highways (49 C.F.R. 171 through 179), did offer for transport in interstate commerce from Lockland, Ohio, to Louisville, Kentucky, to Ecoff Trucking, Inc., a shipment of 1 truckload, Sulfuric Acid and did knowingly fail to show on the shipping papers the proper name, Sulfuric Acid, and the required classification of said property, to wit, Corrosive Liquid, in violation of 49 C.F.R. 173.427 (18 U.S.C. 834).

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[2] The functions, duties, and powers of the Interstate Commerce Commission to regulate transportation of hazardous materials were transferred to the Secretary of Transportation in section 6(e)(4) of the Department of Transportation Act, 80 Stat. 937, 49 U.S.C. (Supp. V) 1655(e)(4).

The other counts are substantially the same, except that counts 1, 2, and 4 allege only that the defendant knowingly failed to show the required classification on the shipping papers.

Appellee filed a pretrial motion to dismiss the information pursuant to Rule 12(b)(2), F.R. Crim. P. While admitting "technical violations of the regulation" (App. 13), appellee contended that the information was insufficient because it alleged only "knowing failure" to show the proper designations on shipping papers and not a "knowing violation" of the "regulation." The district court agreed. Relying upon this Court's opinion in *Boyce Motor Lines, Inc.* v. *United States,* 342 U.S. 337, and certain lower federal court decisions, the court ruled that knowledge of the regulation itself, in addition to deliberate performance of acts constituting a violation, "is an essential element of the crime charged" (App. 8). It therefore granted the motion, dismissing the information for failure to allege such knowledge (*Ibid.*).

SUMMARY OF ARGUMENT

The district court, in this case, dismissed an information charging appellee with violations of 18 U.S.C. 834, which makes it a crime to "knowingly violate" regulations of the Department of Transportation for interstate transportation of explosives and other dangerous materials. The information was dismissed because it failed to allege that the defendant-shipper had knowledge of the regulation which allegedly was violated. The effect of the district court's decision will

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thus be to require the government, at least with respect to statutes prohibiting knowing violations of regulations, to allege and prove knowledge of the terms of regulations and intent to violate them.

This result is squarely at odds with the fundamental principle of our jurisprudence that ignorance of a law does not excuse its violation. There is no basis for concluding that Congress intended to make an exception to this principle by use of the word "knowingly" in this or any other regulatory statute. Rather, that term merely signifies that the government must prove the existence of the traditional element of *scienter*—that a defendant acted or failed to act deliberately or consciously, rather than inadvertently, with knowledge of the facts and circumstances but not necessarily knowledge of the law which made his conduct illegal.

The court below relied upon this Court's decision in *Boyce Motor Lines* v. *United States,* 342 U.S. 337. Its reliance was misplaced. The question of whether knowledge of the existence or terms of a regulation under Section 834 was not directly before the Court in that case. The Court's discussion of the intent requirement of the statute, however, clearly demonstrates that it considered traditional *scienter* to be the only requisite mental element of the offense. Nor is there support in any other decision of this Court for the action of the district court in this case.

The legislative history of the 1960 amendment to the Transportation of Explosives Act does not suggest that Congress intended to make an exception to the

principle that ignorance of the law is no excuse by requiring the government to prove a defendant's knowledge of the regulations. Congress did, at the time, consider changing the "knowingly" requirement and it was initially argued that the proposed change would insure that the government did not bear the burden of proving such knowledge. But the fact that the present terminology was retained does not imply endorsement by Congress of the proposition that knowledge of the regulations is an element of the offense. Congress was aware of the decision in *Boyce* and of lower court opinions which had read that decision to make knowledge of the regulations an element of the offense. In the last analysis, however, it accepted the proper interpretation of the *Boyce* opinion—that it did no more than recognize the traditional *scienter* requirement. There was, consequently, no reason for Congress to seek to clarify its intent by changing standard terminology used in this provision, as well as many others.

ARGUMENT

KNOWLEDGE OF THE REGULATION, AS DISTINCT FROM KNOWLEDGE OF THE ACTS DONE, IS NOT AN ELEMENT OF THE OFFFENSE UNDER 18 U.S.C. 834

A. THE DISTRICT COURT BELOW ERRONEOUSLY CONCLUDED THAT USE OF THE WORD "KNOWINGLY" IN THIS SECTION REQUIRES AN EXCEPTION TO THE PRINCIPLE THAT IGNORANCE OF THE LAW DOES NOT EXCUSE

1. The fundamental principle that "ignorance of the law will not excuse" is "deep in our law." *Lambert*

v. *California*, 355 U.S. 225, 228. It is well established that lack of knowledge of the existence or provisions of a criminal statute need not be proved by the prosecution and is not a defense in a trial for serious crimes against person or property, such as murder, robbery or rape. The principle applies equally with respect to violations of laws which are essentially regulatory in character.[3] As Mr. Justice Holmes explained in *Ellis* v. *United States*, 206 U.S. 246, 257, which involved a conviction under a statute punishing persons who "intentionally violate" limitations on the hours of work for government laborers and mechanics:

> If a man intentionally adopts certain conduct in certain circumstances known to him, and that conduct is forbidden by the law under those circumstances, he intentionally breaks the law in the only sense in which the law considers intent. * * *

There is, in short, a presumption, ordinarily conclusive, of knowledge of the law. Perkins, *Criminal Law* (1st ed., 1957) 808–809.[4] The justification for this

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[3] *Lambert* v. *California*, *supra*, represents an exception. The Court held invalid a city ordinance which imposed criminal penalties on any convicted person who failed to register as such after remaining more than five days in Los Angeles or coming into the city more than five times in a month. This Court held that the ordinance was unconstitutional as applied to someone who had no actual knowledge of its provisions and whose "conduct * * * [was] wholly passive" and not of a type which would "alert the doer to the consequences of his deed." 355 U.S. at 228. In the present case, the prohibited conduct is not passive and, as shown below, shippers have an affirmative obligation to acquaint themselves with the regulations. See p. 10, *infra*, n. 5.

[4] Where guilt of a crime depends upon a certain mental state with respect to a law other than that defining the crime, a

presumption is a sensible one: "[t]o admit the excuse at all would be to encourage ignorance where the lawmaker has determined to make men know and obey," Holmes, *The Common Law* (Howe ed. 1963) 41. The district court has rejected this fundamental principle with respect to the statutory language, "knowingly violates * * * [a] regulation." For its decision requires the government to allege and prove that the defendant knew the terms of the regulation and specifically intended to violate it by his conduct.

a. The district court's decision is based upon a misinterpretation of this Court's opinion in *Boyce Motor Lines, Inc.* v. *United States,* 342 U.S. 337. In that case, petitioner was charged, under Section 834's predecessor (which is identical to the present statute so far as here pertinent), with violating a regulation requiring drivers of motor vehicles transporting any explosive or inflammable substance to "avoid, so far as practicable, and, where feasible, by prearrangement of routes, driving into or through congested thoroughfares * * *." 342 U.S. at 339. The indictment alleged that petitioner had routed its trucks, which carried an inflammable liquid, through Holland Tunnel despite the availability of safer routes, and that petitioner "well knew" this to be in violation of the regulation. *Ibid.* The question in *Boyce* was

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mistake with respect to the other law generally negates liability. For example, the crime of larceny requires an intent to appropriate property of another. Demonstration of "a misunderstanding of property law," leading to a "bona-fide belief" that the item taken belonged to the defendant, would be a defense. Perkins, *supra*, at 822.

whether the regulation was unconstitutionally vague; the *scienter* element of the statute was not directly at issue. In concluding that the regulation was not vague, however, the Court relied, in part, upon the effect of the intent requirement.

> The statute punishes only those who knowingly violate the Regulation. This requirement of the presence of culpable intent as a necessary element of the offense does much to destroy any force in the argument that application of the Regulation would be so unfair that it must be held invalid. That is evident from a consideration of the effect of the requirement in this case. To sustain a conviction, the Government not only must prove that petitioner could have taken another route which was both commercially practicable and appreciably safer (in its avoidance of crowded thoroughfares, etc.) than the one it did follow. It must also be shown that petitioner knew that there was such a practicable, safer route and yet deliberately took the more dangerous route through the tunnel, or that petitioner willfully neglected to exercise its duty under the Regulation to inquire into the availability of such an alternative route. [342 U.S. at 342; footnotes omitted.] [5]

[5] The Court noted that the officers, agents and employees of every motor carrier concerned with the transportation of explosives and dangerous articles are required by regulation (then 49 C.F.R. (1949 ed.) 197.02, presently 49 C.F.R. 397.02) to "become conversant" with the above and other regulations applying to such transporation. 342 U.S. at 342 n. 15. The provisions of the present statute, 18 U.S.C. 834(d), further require publication of penal regulations and a subsequent ninety-day waiting period before they become effective.

It is plain from the quoted passage that the Court in *Boyce* was not saying that knowledge of the existence or terms of the regulation—*i.e.*, knowledge of the law—is an element of the offense under 18 U.S.C. 834. Rather, the discussion of the element of culpable intent focused only on the traditional requirement of proof that the defendant did the act for which he is to be punished consciously and not inadvertently—*i.e.*, with knowledge of the fact that a safer route was available or the equivalent, a willful failure to consider whether that fact existed or not.

As Mr. Justice Jackson, dissenting on the vagueness issue, commented:

> [T]he knowledge requisite to knowing violation of a statute is factual knowledge as distinguished from knowledge of the law. I do not suppose the Court intends to suggest that if petitioner knew nothing of the existence of such a regulation its ignorance would constitute a defense. [342 U.S. at 345.]

If the Court had intended to recognize an exception to the basic principle that ignorance of the law does not excuse, it would have done so in clear terms. *Cf. Lambert* v. *California*, 355 U.S. 225, 228; *Screws* v. *United States*, 325 U.S. 91, 104–105.

b. The proper construction of the requirement of knowing violation of a regulation under 18 U.S.C. 834 was recently articulated in *Texas-Oklahoma Express, Inc.* v. *United States*, 429 F. 2d 100 (C.A. 10). The case involved a regulation forbidding a carrier from leaving a motor vehicle transporting certain classes of explosives "unattended at any time during

[the] course of transportation." After discussing *Boyce* and other cases relied on below, the court concluded simply:

> [I]t is necessary to show but one step—that the trailer was intentionally left unattended, and not two steps—that a violation of the Regulation was intended and the truck was left unattended. * * * [429 F. 2d at 103.]

It is true that several lower courts, subsequent to *Boyce*, imposed a requirement under this statute of proof of specific intent to violate a known regulation, rather than simply proof of intent to commit the acts constituting the offense. *E.g., United States* v. *Chicago Express*, 235 F. 2d 785 (C.A. 7); *St. Johnsbury Trucking Co.* v. *United States*, 220 F. 2d 393 (C.A. 1). But it remains that there is no support in *Boyce* or any other decision of this Court for such an exception to established principles of criminal responsibility.[6]

2. Courts which have imposed a requirement of proof of knowledge of a regulation and specific intent to violate it may have been influenced by the circumstance that 18 U.S.C. 834 does not itself specify the acts which constitute a violation. Rather, like

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[6] Seven years after *Boyce*, the Court, in *United States* v. *A&P Trucking Co.*, 358 U.S. 121, held that a partnership can "knowingly violate" the regulations under the statute. The information charged simply that "defendant did knowingly transport by motor vehicle more than 2500 pounds * * * of methanol" without the vehicle's being properly marked (Transcript of Record, No. 32, O.T. 1958, p. 23). The Court affirmed the conviction, without discussing the *scienter* requirement, despite the fact that knowledge of the regulation was not alleged in the indictment.

many statutes, it merely refers to "regulations," delegating to the administrative agency the responsibility to detail the factual situations to which the statute will apply.[7] Thus, Judge Magruder, concurring in *St. Johnsbury, supra,* stated:

> If a statute provides that it shall be an offense "knowingly" to sell adulterated milk, the offense is complete if the defendant sells what he knows to be adulterated milk, even though he does not know of the existence of the criminal statute, on the time-honored principle of the criminal law that ignorance of the law is no excuse. But where a statute provides, as does 18 U.S.C. § 835, that whoever knowingly violates a regulation of the Interstate Commerce Commission shall be guilty of an offense, it would seem that a person could not knowingly violate a regulation unless he knows of the terms of the regulation and knows what he is doing is contrary to the regulation. * * * [220 F. 2d at 398.]

Judge Magruder's opinion seems to imply that, if the statute in this case itself stated the prohibition that is in fact stated in the incorporated regulation, then there would be a "knowing" violation notwithstanding ignorance of the statute's terms. But there is no principle of statutory interpretation or jurisprudence that

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[7] Among statutes similarly imposing criminal penalties for "knowing" or "willful" violations of rules or regulations are: 15 U.S.C. 717t (transportation and sale of natural gas); 16 U.S.C. 825o (public utilities supplying electric energy); 43 U.S.C. 1334 (conservation of natural resources of the Outer Continental Shelf); and 47 U.S.C. 502 (wire or radio communication).

gives "knowing" varying meanings depending on whether a statute establishes a general prohibition encompassing numerous factual situations which are detailed in regulations, or instead itself describes each set of circumstances to which its sanctions will apply.[8]

There is no issue here of the propriety of the delegation of the power to establish regulations or of the validity of the particular regulation which was allegedly violated. There is consequently no reason, we submit, why the term "regulations" should not be treated simply as a shorthand designation for the specific descriptions of acts and omissions which constitute violations of the statute. And when the statute is viewed in this manner, we contend, it is even clearer that use of the language "knowingly violates * * * [a] regulation" does not signal an exception to the rule that ignorance of the law does not excuse.

B. CONGRESS HAS NOT MADE KNOWLEDGE OF THE REGULATIONS AND A SPECIFIC INTENT TO VIOLATE THEM ELEMENTS OF THE OFFENSE

1. Congress has "wide latitude" to determine what acts will be treated as criminal and to define the mental element which must be proved for conviction. *Lambert* v. *California,* 355 U.S. 225, 228. In certain "public welfare" statutes, Congress has eliminated the element

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[8] Sections 832 and 833 of the same statute, 18 U.S.C. 832, 833, dealing respectively with transportation of explosives and other dangerous articles and marking of packages containing them, specify the proscribed conduct in some detail, although they are, to a degree, dependent upon regulations to define their prohibitions. Both contain the "knowingly" requirement.

of *scienter* entirely, imposing absolute criminal liability for prohibited acts or omissions whether done deliberately or inadvertently. See, e.g., *Morissette* v. *United States,* 342 U.S. 246; *United States* v. *Dotterweich,* 320 U.S. 277; *United States* v. *Balint,* 258 U.S. 250; *Shevlin-Carpenter Co.* v. *Minnesota,* 218 U.S. 57.

"Public welfare" statutes compose the broad class of essentially regulatory measures which are necessary in a complex, industrial society. *Morissette* v. *United States, supra,* 342 U.S. at 253–254. They include, for example, laws prohibiting sale of impure or adulterated foods or drugs and regulations regarding traffic and motor vehicles. See Sayre, *Public Welfare Offenses,* 33 Col. L. Rev. 55 (1933); Perkins, *Criminal Law* 692–710. The purpose of punishing inadvertent acts or omissions in violation of these statutes is to increase compliance with regulations by placing "the burden of acting at hazard upon a person otherwise innocent but standing in responsible relation to a public danger." *United States* v. *Dotterweich, supra,* 320 U.S. at 281.

All public welfare statutes do not, however, impose absolute liability. Whether they do, as this Court has said, is "a question of legislative intent." *United States* v. *Balint, supra,* 258 U.S. at 252. In *Balint* and *United States* v. *Behrman,* 258 U.S. 280, this Court inferred from the lack of any reference to a mental element in a statute forbidding sales of narcotics drugs that Congress intended to impose absolute liability. Similarly, if there were no reference to intent in 18 U.S.C. 834, the appropriate interpretation would be

that the statute punished any conduct violating the regulations governing transport of explosives, regardless of whether it was deliberate or inadvertent.[9]

The addition of "knowingly" in a public welfare statute such as the present one thus has the effect of adding an element of intent to commit the acts constituting the offense which would otherwise not be required for conviction.[10] The use of that word cannot, however, reasonably be said also to have added the further requirement of proof that the defendant know the law and specifically intend to violate it. Congress undoubtedly has the power to require proof of such an intent, and in several statutes it has explicitly made lack of knowledge of statutes or regulations a defense.[11] But it has not done so expressly here and there is no warrant for reading such a double *scienter* requirement into its simple use of the word "knowing."

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[9] In *Morissette*, by contrast, this Court construed silence regarding intent in a federal larceny statute, adopting "a concept of crime already so well defined in common law", as indicating an intent to incorporate the traditional common law requirement of general intent. 342 U.S. at 262. Since the statute here is concerned with regulatory matters and has no common law antecedent, the present case is more akin to *Balint*

[10] One possible explanation for the inclusion of the element of intent in 18 U.S.C. 834 is reluctance to impose penalties as serious as a year's imprisonment (or ten, if anyone is physically harmed as a result of the violation) for an act which is inadvertent. Cf. *Morissette* v. *United States*, *supra*, 342 U.S. at 256.

[11] See, *e.g.*, 15 U.S.C. 79z–3 (public utility holding companies) and 15 U.S.C. 80a–48 (investment companies), providing penalties for violation of any "provision of" the statute or "any rule, regulation or order," except that:

> "no person shall be convicted under this section for the violation of any rule, regulation, or order if he proves that

2. Congress has included the requirement of proof that prohibited acts or omissions be done "knowingly or willfully" in a number of "public welfare" statutes.[12] In considering such statutes, this Court and most lower federal courts have interpreted the term "knowingly" as requiring only proof of intent to do the prohibited act, not proof of knowledge of the law. See *e.g., Ellis* v. *United States,* 206 U.S. 246, discussed *supra,* p. 8; *United States* v. *Illinois Central R. Co.,* 303 U.S. 239; *Corsicana National Bank* v. *Johnson,* 251 U.S. 68.[13]

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he had no actual knowledge of such rule, regulation, or order."

The National Commission on Reform of Federal Criminal Laws (the Brown Commission), has proposed generally to make "a person's good faith belief that conduct does not constitute a crime * * * an affirmative defense if he acted in good faith reliance" on certain official interpretations of the law. Final Report, A Proposed New Federal Criminal Code, § 610, pp. 52–53. Cf. American Law Institute, Model Penal Code (Proposed Official Draft, 1962) § 2.04.

[12] The working papers of the Brown Commission contain a partial list of the numerous regulatory criminal statutes employing these or similar terms. See Working Papers, Vol. I, pp. 409–417. The Commission has proposed uniform provisions on punishment for violation of such offenses to replace the "staggering array" of differently phrased *scienter* requirements now contained in the United States Code. See Final Report, Proposed New Federal Criminal Code, §§ 302, 1006, pp. 27–30, 74–76; Working Papers, Vol. I, pp. 118–135. The provisions establish increasing penalties depending upon whether liability is absolute or depends upon some form of intent. Cf., American Law Institute, Model Penal Code (Proposed Official Draft, 1962), §§ 2.02, 2.05.

[13] The petitioner in *Morrissette, supra,* in fact, argued that a "knowing" conversion required proof of knowledge of the law as to conversion and specific intent to violate it. (Brief for

In *United States* v. *Illinois Central R. Co., supra,* the Court considered a statute, 45 U.S.C. 73, providing penalties for "[a]ny railroad * * * [which] knowingly and willfully fails to comply with the provisions" relating to the length of time during which cattle could be confined in freight cars. The alleged violation was simply that respondent had "knowingly and willfully" confined cattle in a car for a specified, excessive period of time; there was no allegation that respondent knew the terms of the regulation which allegedly was violated. (Transcript of Record, No. 352, O.T. 1937, p. 4). With respect to the word "knowingly," the Court held that:

> The penalty is not imposed for unwitting failure to comply with the statute [citations omitted]. But in this case, the respondent knew when the permissible period of confinement would expire, brought the car to [its] destination, and, within the time period allowed, placed it for unloading. By allowing the 36 hours to expire, it "knowingly" failed to comply with the statute. [303 U.S. at 242.] [14]

Petitioner, No. 12, O.T. 1951, pp. 17–20; see Brief for the United States, p. 13). The Court rejected that argument (342 U.S. at 270–271), saying:

> [K]nowing conversion requires more than knowledge that defendant was taking property into his possession. He must have had knowledge of the facts, though not necessarily the law, that made the taking a conversion. * * *

[14] The Court held that "willfully" in this statute meant either intentional disregard for the law or indifference to its requirements. It concluded that this element was satisfied in this case by proof of the negligence of one of respondent's employees. This definition of willfulness has not been adopted for all

Similarly, a number of lower federal courts have found that 49 U.S.C. 322(a), which states that "[a]ny person knowingly and willfully violating any * * * rule, regulation, requirement, or order" dealing with the operation of interstate motor carriers "for which a penalty is not otherwise * * * provided" shall be subject to a fine, does not require proof of specific criminal intent.[15]

These analogous decisions reinforce our interpretation of the term "knowingly" in Section 834 as requiring only proof of an intentional act or omission and not also knowledge of the regulation and specific intent to violate it. This interpretation, moreover, is eminently fair in this context, for one who engages in a regulated industry is properly held to knowledge of the regulations governing that industry. If he deliber-

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cases (see, *e.g.*, *Dennis* v. *United States*, 171 F. 2d 986 (C.A. D.C.) affirmed, 339 U.S. 162), for, as this Court has said, "willful * * * is a word of many meanings, its construction often being influenced by its context". *Spies* v. *United States*, 317 U.S. 492, 497; see also *United States* v. *Murdock*, 290 U.S. 389, 394.

[15] See *United States* v. *John Henricks, Inc.*, 388 F. 2d 677 (C.A. 7); *Riss & Co.* v. *United States*, 262 F. 2d 245 (C.A. 8); *Steere Tank Lines, Inc.* v. *United States*, 330 F. 2d 719 (C.A. 5); *Inland Freight Lines* v. *United States*, 191 F. 2d 313 (C.A. 10); *United States* v. *Lowther Trucking Co.*, 229 F. Supp. 812, 816 (N.D. Ala.); *United States* v. *Joralemon Brothers, Inc.*, 174 F. Supp. 262 (E.D. N.Y.); *United States* v. *E. Brooke Matlack, Inc.*, 149 F. Supp. 814 (D. Md.). See, also, *Abbett, Sommer & Co.* v. *Securities and Exchange Commission*, No. 23,658 (C.A. D.C.), decided, September 25, 1970, pending on petition for a writ of certiorari, No. 1158 this Term; *Tager* v. *Securities and Exchange Commission*, 344 F. 2d 5 (C.A. 2).

ately does an act which the regulations prohibit, the government should not be required to prove that he did [redacted] know that which it was his duty to know.

3. Congress considered the effect of the use of the word "knowingly" when it revised the Transportation of Explosives Act in 1960.[16] The legislative history of the revision is fully consistent with the interpretation that the statute requires only the intent to engage in certain conduct and not a specific intent to violate known regulations.

In April 1957, Senator Magnuson introduced a bill to amend the Act. Among the changes proposed was deletion of the words "whoever knowingly" and substitution of the phrase "[whoever] being aware that the Interstate Commerce Commission has formulated regulations for the safe transportation of explosives and other dangerous articles." 105 Congressional Record 6755–6756. The proposal was prompted by concern that courts would consider knowledge of the specific provisions of the pertinent regulation an element of

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[16] There were two major changes in the Act. Radioactive materials and etiologic agents (such as live viruses and bacteria) were brought within its scope. And its prohibitions were applied for the first time to private and contract carriers, as well as common carriers. H. Rep. No. 1975, 86th Cong., 2d Sess., p. 3.

Essentially the present provisions with respect to knowing transportation of explosives had been included in the 1909 codification of penal laws. 35 Stat. 1135. The legislative history of this codification gave no explanation of the "knowingly" requirement. See S. Rep. No. 10, Part 1, 60th Cong., 1st Sess., p. 23.

the offense under the statute. Its purpose was to make certain that such knowledge was not required."[17]

Senator Magnuson's bill was passed by the Senate (105 Cong. Rec. 18739–18740) and referred to the House. A staff memorandum of the House Committee on the Judiciary (reprinted in the Committee Report, H. Rep. No. 1975, 86th Cong., 2d Sess., pp. 14–19) urged deletion of the revised *scienter* requirement and resubstitution of "knowingly." The memorandum contended that the existing language, as it had been construed by the Supreme Court, required proof only of "an awareness of the commission of the unlawful act * * * but not an awareness of the existence or provisions of the law which makes the act criminal." H. Rep. No. 1975, 86th Cong., 2d Sess., pp. 17–18. The staff memorandum noted that this was the traditional requirement for offenses involving "inherent wrongs." It asserted, "in line with contemporary concepts in this field" (*Id.* at 17), that there should be no requirement of greater proof of *scienter* with respect

[17] The written "justification" for the change (reprinted at 105 Congressional Record 6755–6756) discussed this Court's decision in *Boyce* and evinced particular concern with the concurring opinion of Judge Magruder in *St. Johnsbury Trucking Co.* v. *United States*, *supra*. It also noted that the Interstate Commerce Commission had recommended simply eliminating the term "knowingly", thereby creating absolute liability. The justification expressed ~~expressing~~ the view that, because of the "added peril inherent in the transportation of the commodities concerned, statutory creation of an absolute liability does not seem unreasonable." The proposal nevertheless elected to include language the intended effect of which apparently was to retain a requirement of conscious action or inaction.

to "so-called public welfare offenses such as the present act, which * * * are made unlawful only because of an overriding social interest such as the protection of the public health and safety * * *." (*Id.* at 18).[18] And, the memorandum argued, a change in the "knowingly" terminology in Section 834 would, without apparent reason, make the *scienter* element of that section inconsistent with Sections 832 and 833, which retain that terminology.

The House Committee did re-substitute the term "knowingly." Its Report stated (*id.* at p. 2):

> The present Transportation and Explosives Act requires that a violation "knowingly" be committed before penalty may be inflicted for such violation. Under the present law there is judicial pronouncement as to the standards of conduct that make a violation a "knowing" violation. The instant bill would change substantially the quantum of proof necessary to prove a violation since it provides that "any person who being aware that the Interstate Commerce Commission has formulated regulations for the

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[18] In light of the reference in the proposed amendment to general awareness of the existence of Regulations, the memorandum contended that:

> "There is * * * reason to believe that the [Senate] bill would impose on the Government a more stringent requirement of proof than does the present law as construed by the Supreme Court, though an opinion of a very able lower appellate court judge [Judge Magruder] which has no doubt had considerable impact * * * read the statute as casting an even heavier burden on the Government. * * * [*Id.* at 17.]

By contrast, the Committee apparently felt that the new requirement was less stringent (see pp. 22–23, *infra*.)

> safe transportation of explosives and other dangerous articles" is guilty if there is a noncompliance with the regulations. Such language may well create an absolute liability for violation. * * * Since the penalties prescribed for violation of the Explosives Act are substantial and since proof required to sustain a charge of violation of such regulations under the bill would require little more than proof that the violation occurred, it is the considered opinion of the committee that such a substantial departure in present law is not warranted. It is the purpose of this amendment to retain the present law by providing that a person must "knowingly" violate the regulations.

As amended, the bill passed the House on August 23, 1960 (106 Cong. Rec. 17261–17262). The Senate concurred in the House amendments on August 26, 1960 (106 Cong. Rec. 17789), and the bill in its present form was subsequently enacted.

In this context, it is clear that enactment of the present statute was by no means an endorsement by Congress of the interpretation of the term "knowingly" suggested in *St. Johnsbury*. There is no reason to believe that the Committee did not accept the view of its staff that the present law did not require knowledge of a regulation and specific intent to violate it, notwithstanding *St. Johnsbury*. By retaining "the present law", therefore, Congress intended simply to preserve what it considered, with good reason, to be the existing traditional *scienter* requirement of awareness of the facts and intent to engage in the conduct

involved but not knowledge of the legal provisions which prohibit that conduct.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the order of the District Court should be reversed and the case remanded for further proceedings under the information.

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No. 557

In the Supreme Court of the United States

OCTOBER TERM, 1970

UNITED STATES OF AMERICA,

Appellant,

v.

INTERNATIONAL MINERALS & CHEMICAL CORPORATION

ON CERTIFICATION FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR APPELLEE

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No. 557

UNITED STATES OF AMERICA,

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INTERNATIONAL MINERALS & CHEMICAL CORPORATION

ON CERTIFICATION FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR APPELLEE

QUESTIONS PRESENTED

Title 18 U.S.C. §834(f) provides that whoever "knowingly violates" any regulation of the Interstate Commerce Commission (now Department of Transportation) for the safe transportation of explosives and other dangerous articles shall be subject to fine and imprisonment. The information herein does not charge that the defendant knowingly violated a regulation but only that it "did

knowingly fail to show on the shipping papers the required classification" and, in two of the five counts, the proper name of an article offered for transportation, in violation of an applicable regulation. The district court dismissed the information because of the failure to allege that the defendant knowingly violated the regulation. The questions presented are:

1. Is an information purporting to charge an offense under 18 U.S.C. §834(f) sufficient if it alleges that the defendant knowingly failed to show on shipping papers covering interstate shipments of sulfuric acid and hydrofluosilicic acid the precise information required by a regulation of the Department of Transportation issued pursuant to 18 U.S.C. §834(a) but fails to allege that the defendant knowingly violated such regulation?

2. Are there no circumstances under which one who knowingly fails to show on the shipping papers the precise information required by a regulation of the Department of Transportation issued pursuant to 18 U.S.C. §834(a) could be found not guilty of knowingly violating such regulation?

STATEMENT

An information was filed against the defendant in the United States District Court for the Southern District of Ohio, Southern Division. The first four counts allege that the defendant, in violation of an applicable regulation of the United States Department of Transportation, "did knowingly fail to show on the shipping papers the required classification" (corrosive liquid) of sulfuric acid which defendant offered for transportation in interstate commerce. In addition, count 3 alleges that the defendant "did knowingly fail to show" the proper name of the article on the shipping papers. Count 5 is similar to

count 3 except that the article involved is hydrofluosilicic acid (App. 3-5). Defendant's motion to dismiss was granted by the district court on the ground that:

> The information does not, however, charge that the defendant knowingly violated the above regulation. . . .
>
> . . . knowledge of violating the above I.C.C. regulation is an essential element of the crime charged under 18 U.S.C. section 834(f).
>
> Hence, failure to make such an allegation(s) in the information warrants granting defendant's motion to dismiss. *Rudin* v. *United States,* 254 F.2d 45 (6 Cir., 1958). (App., 8)

The district court did *not* rule, as stated in the Government's brief (p. 5), "that knowledge of the regulation itself, in addition to deliberate performance of acts constituting a violation, 'is an essential element of the crime charged.'" It held that "knowledge *of violating* the above I.C.C. regulation is an essential element," which is altogether different from what the Government states. Nor is it accurate to say that "the information was dismissed because it failed to allege that the defendant-shipper had knowledge of the regulation which allegedly was violated." (Gov't Br., p. 5) The information was dismissed because it failed to allege that the defendant "knowingly violated" the regulation.

SUMMARY OF ARGUMENT

We raise no issue as to the jurisdiction of the Court, although it is evident that this case involves the construction of a statute only in the broad sense that the dismissal of an information for failure to allege the essential elements of a statutory offense necessarily depends in every case on the court's determination from the words of the statute what the necessary elements of the offense are.

Contrary to the Government's statement, however, the district court did not, in any other sense, construe the provisions of 18 U.S.C. §834(f). The only statement in the opinion that could conceivably constitute a construction of the statute is the statement that "knowledge of violating the above I.C.C. regulation is an essential element of the crime." But this is simply a paraphrase of the "knowingly violates" language of the statute. The district court dismissed the information because it found it insufficient in failing to allege a knowing violation of the regulations. The district court did not consider what would constitute a knowing violation and it never reached the question posed by the Government of whether the statute "requires actual knowledge of the regulations and a specific intent to violate them." (Gov't. Br., p. 2). The district court's holding was that "knowledge of *violating* the above I.C.C. regulation is an essential element of the crime charged," which seems rather obvious since the statute imposes liability only on one who "knowingly violates" a regulation. The district court held only that a knowing violation must be alleged. Its citation of *Rudin* v. *United States*, 254 F.2d 45 (6th Cir., 1958), which discusses the tests for the sufficiency of an indictment, shows that it was passing on the sufficiency of the information rather than construing the statute.

A holding by this Court that the information here before the Court is sufficient to state an offense under 18 U.S.C. §834(f) would be tantamount to a holding that there are no conceivable circumstances under which one who knows he has not included in the shipping papers a specific item of information which happens to be required by a regulation of the Department of Transportation could be found not guilty of a "knowing" violation of such regulation. Since there is nothing before the Court but

the information and the motion to dismiss, the Court does not know the circumstances which led to the failure to include all of the required information on the shipping papers. The Government's brief assumes that the defendant did not know of the particular regulation, but this is only one of numerous possibilities, some of which might constitute a knowing violation of the statute and some of which might not. The Government's brief concedes that a possible explanation for the "knowingly violates" requirement of the statute is the reluctance of Congress to impose the severe penalties prescribed for an act which is inadvertent. (Gov't Br., p. 16). The only way a court can make an intelligent determination as to whether defendant knowingly violated the regulation is on the basis of the facts developed at a trial.

If the information in this case is sufficient, the word "knowingly" is written out of the statute. At the time of the 1960 amendment, Congress considered whether this should be done and determined that the requirement of a knowing violation should be retained in the law. The Government would now reverse that determination by using an information which eliminates that requirement.

ARGUMENT

If, as we believe, the district court's holding that "knowledge of violating the . . . regulation is an essential element of the crime charged" is not a construction of the statute, but is simply a paraphrase of the statute, which imposes criminal liability only on one who "knowingly violates" a regulation, the correctness of the district court's dismissal of the information is so obvious that it requires no elaboration. The statute, by its express terms, punishes only those who knowingly violate a regulation; therefore, failure to allege that defendant "knowingly" violated the regulation is fatally defective. *Boyce Motor Lines, Inc.* v. *United States,* 342 U.S. 337, 342, 343; *St. Johnsbury Trucking Company* v. *United States,* 220 F.2d 393, 397 (1st Cir., 1955); *United States* v. *Chicago Express,* 235 F.2d 785, 786 (7th Cir., 1956); *United States* v. *Deer,* 131 F. Supp. 319, 320 (E.D. Wash., 1955); *United States* v. *Valenti,* 74 F. Supp. 718, 720 (W.D. Pa., 1947); *United States* v. *Debrow,* 346 U.S. 374, 376; *United States* v. *Seeger,* 303 F. 2d 478, 482 (2d Cir., 1962); *Clay* v. *United States,* 218 F.2d 483, 486 (5th Cir., 1955); *United States* v. *Tornabene,* 222 F.2d 875, 878 (3rd Cir., 1955); Rule 7(c), 18 U.S.C. No case cited in the Government's brief is to the contrary. The arguments of the Government in support of its contentions here are simply not relevant to any question here before the Court.

Assuming, *arguendo,* however, that, as the Government argues, the determination of the district court was based on a construction of the statute, what was that construction?

Taking count 1 as typical, it was that a knowing failure to show on the shipping papers that sulfuric acid is classified as a corrosive liquid was not *necessarily* a knowing violation of the regulation. Stated a little differently, the court held that it may be possible for one knowingly to fail to show the classification required by the regulation without violating the regulation "knowingly."

The statute imposes heavy penalties on one who "knowingly violates" a regulation of the Department of Transportation issued pursuant to 18 U.S.C. §834(a). Under the Government's theory, it is necessary to allege and prove only a knowing failure to include on the shipping papers the precise information required by the regulation. In the present case, it would be necessary to show only that the defendant knew that the sulfuric acid was not described in the shipping papers as "corrosive liquid." No other circumstances bearing on whether defendant knew it was violating the regulation would be relevant.

If we are here dealing with a construction of the statute, the Court needs to consider whether there could be *any* circumstance under which a person who knew that he had not prepared shipping papers showing the classification as corrosive liquid could, nevertheless, be held to be not guilty of violating the statute. All sorts of possibilities of an unknowing violation of the regulation come readily to mind. For example, an individual who had never heard of regulations of the Department of Transportation in this field might make a single shipment in the course of a lifetime. It would not be unreasonable for him to assume that he could simply deliver the article to a common carrier and depend on the carrier to see that it was properly labeled and that the shipping papers were in proper order. Is it reasonable to assume that Congress intended that an individual be subject to imprisonment

under these circumstances? The Government, itself, recognizes that—

> One possible explanation for the inclusion of the element of intent in 18 U.S.C. 834 is reluctance to impose penalties as serious as a year's imprisonment (or ten, if anyone is physically harmed as a result of the violation) for an act which is inadvertent. *Cf. Morissette* v. *United States, supra,* 342 U.S. at 256. (Gov't Br., p. 16)

In the case of a corporation, there are all kinds of possibilities. The failure could have occurred at any level. It might have been due to a failure to transmit instructions, or to a failure on the part of a subordinate to carry them out. The regulations are lengthy and complex, covering 760 pages in the Code of Federal Regulations, 49 CFR 69-839. The failure could have been due to misinterpretation of a regulation, to failure to learn of recent changes in regulations, to a misunderstanding of instructions by a subordinate or to mere inadvertence. These are just some of the possibilities. Others will undoubtedly occur to the Court. Some situations might impose liability while others might not. Some may be black or white and others may be various shades of gray. What the statute requires in the way of knowledge should be determined on the basis of a factual record and not on mere pleadings.

The Government, in effect, is asking the Court to strike the word "knowingly" from the statute, despite the fact that Congress expressly refused to do so when it amended the Act in 1960. Following the decisions in *Boyce Motor Lines, Inc.* v. *United States,* 342 U.S. 337, and *St. Johnsbury Trucking Co.* v. *United States,* 220 F.2d 393 (1st Cir. 1955), the Interstate Commerce Commission (which then had the responsibility for the regulations) sought a number of amendments to the Act, including deletion of the word

"knowingly" so as to impose absolute liability for a violation of the regulations. In the 85th Congress, the Senate passed a bill (S. 1491) deleting the word "knowingly", and substituting therefor the words "being aware that the Interstate Commerce Commission has formulated regulations for the safe transportation of explosives and other dangerous articles." The bill was not passed by the House.

In the 86th Congress, the Commission again submitted a draft bill to the chairmen of the Senate and House committees on interstate and foreign commerce. While stating that it still preferred that the word "knowingly" simply be deleted from the statute, it recommended use of the "being aware" language which had been substituted for "knowingly" by the Senate in the 85th Congress as being a substantial improvement over the existing provisions. The Commission's memorandum recommending the Senate's substitute language is printed in the House Report (H. Rep. No. 1975, 86th Cong., 2nd Sess., pp. 7-11) and a copy of the relevant portions is attached hereto as Appendix A. It will be noted that the Commission deemed the amendment necessary to avoid the impact of the decisions in *Boyce Motor Lines* and *St. Johnsbury Trucking Company.*

The bill, as enacted by the Senate (S. 1806), contained the language "being aware that the Interstate Commerce Commission has formulated regulations for the safe transportation of explosives and other dangerous articles." The Senate report stated:

> Prosecution for violations of the Commission's transportation of explosives regulations has been extremely difficult because of the requirement in section 835 of the act that violators must have knowledge that they violated the Commission's regulations. While the com-

> mittee believes that every reasonable precaution should be taken to provide for punishing those violating a statute whose purpose is to promote safety, the creation of an absolute liability is deemed too stringent. (S. Rep. No. 901, 86th Cong., 1st Sess., pp. 2-3)

The House, however, refused to accept the Senate's language and resubstituted the word "knowingly", stating:

> The present Transportation and Explosives Act requires that a violation "knowingly" be committed before penalty may be inflicted for such violation. Under the present law there is judicial pronouncement as to the standards of conduct that make a violation a "knowing" violation. The instant bill would change substantially the quantum of proof necessary to prove a violation since it provides that "any person who being aware that the Interstate Commerce Commission has formulated regulations for the safe transportation of explosives and other dangerous articles" is guilty if there is a noncompliance with the regulations. Such language may well create an almost absolute liability for violation. * * * Since the penalties prescribed for violation of the Explosives Act are substantial and since proof required to sustain a charge of violation of such regulations under the bill would require little more than proof that the violation occurred, it is the considered opinion of the committee that such a substantial departure in present law is not warranted. It is the purpose of this amendment to retain the present law by providing that a person must "knowingly" violate the regulations. (H. Rep. No. 1975, 86th Cong., 2nd Sess., p. 2)

In spite of the foregoing language, the Government argues that the House committee thought that deletion of the word "knowingly" would make no difference in the meaning of the statute. It argues that the requirement of *scienter* is the same whether "knowingly" is deleted or not. The House committee thought otherwise. There

can be no question but that the "present law," from which the committee considered the Senate amendment would be a "substantial departure," refers to the discussion of *Boyce Motor Lines, Inc.* and *St. Johnsbury Trucking Co.*, in the ICC memorandum (App. A).

The Government's argument is based on a strained interpretation of what it mistakenly thought was a staff memorandum of the House committee on the judiciary. In fact, the memorandum was a memorandum of the staff of the Department of Health, Education and Welfare, which was attached to a letter from that department commenting on the bill, and which was published in the House Report (H. Rep. No. 1975, 86th Cong., 2nd Sess., pp. 14-19), together with the comments of other federal agencies. The Government misconstrues the memorandum and also erroneously states that the memorandum "urged deletion of the revised *scienter* requirement and resubstitution of "knowingly." (Gov't. Br., p. 21) The memorandum did urge deletion of the phrase "being aware" etc. (H. Rep. No. 1975, 86th Cong., 2nd Sess., p. 17). The memorandum continued with a general discussion of the *scienter* requirements of various statutes and concluded:

> Plainly, it would be desirable, in the "interest of the larger good", to ease the Government's burden of proof of violation of a regulation promulgated under a statute regulating transportation of certain dangerous substances, a result we do not think is adequately achieved under the present language of section 834 of the bill. (Id., p. 19)

The HEW memorandum did not, however, as erroneously stated by the Government, advocate resubstitution of

"knowingly". The position of that department was that the statute should impose absolute liability for a violation of the regulation, as had been originally proposed by the Interstate Commerce Commission. The letter of the Secretary of Health, Education, and Welfare, transmitting to Congress the comments of the department, along with the memorandum of its staff, stated:

> We believe that, as originally recommended by the Interstate Commerce Commission in the 85th Congress, the bill should penalize any person who violates a regulation, instead of requiring, as the bill would, that the violator had knowledge of the existence (though not necessarily the terms) of the regulations before a penalty can be imposed. To require such knowledge would create an undesirable precedent for other regulatory legislation designed to protect the public health and safety. (Id., p. 14)

But the views of the Interstate Commerce Commission and Health, Education, and Welfare did not prevail. The House insisted on resubstitution in the Senate bill of the "knowingly violates" language. Being fully aware of the "judicial pronouncements as to standards of conduct that make a violation a 'knowing' violation," it stated that its purpose in so doing was "to retain the present law by providing that a person must 'knowingly' violate the regulations." The Senate agreed to this resubstitution, thus retaining the language of the existing statute in this respect.

The Government now asks this Court to do what Congress expressly declined to do when it passed the 1960 amendments — to write the word "knowingly" out of the statute and apply the test of scienter which would apply had Congress amended the act to delete the word "know-

ingly"— so that all the Government would henceforth have to prove to establish a violation of 18 U.S.C. §834(f) would be that a violation of the regulation thereunder had occurred.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the district court should be affirmed.

Respectfully submitted,

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March, 1971

APPENDIX

APPENDIX

APPENDIX A

EXCERPTS FROM THE INTERSTATE COMMERCE COMMISSION'S STATEMENT OF JUSTIFICATION ACCOMPANYING ITS DRAFT BILL (IDENTICAL TO S. 1806 AS PASSED BY THE SENATE) SUBMITTED TO THE SENATE AND HOUSE COMMITTEES ON INTERSTATE AND FOREIGN COMMERCE, 86th CONGRESS, AND PRINTED IN H. REP. No. 1975, 86th CONG., 2ND. SESS., PP. 7-11.

[p. 9] In *Boyce Motor Lines, Inc.* v. *United States,* (342 U.S. 337), the Supreme Court reviewed the sufficiency of an indictment for a felony violation brought under section 835 of the act. The court stated at page 342:

"The statute punishes only those who knowingly violate the regulation. This requirement of the presence of culpable intent as a necessary element of the offense does much to destroy any force in the argument that application of the regulation would be so unfair that it must be held invalid. That is evident from a consideration of the effect of the requirement in this case. To sustain a conviction, the Government not only must prove that petitioner could have taken another route which was both commercially practicable and appreciably safer (in its avoidance of crowded thoroughfares, etc.) than the one it did follow. It must also be shown that petitioner knew that there was such a practicable safer route and yet deliberately took the more dangerous route through the tunnel, or that petitioner willfully neglected to exercise its duty under the regulation to inquire into the availability of such an alternative route."

In many prosecutions under this statute misdemeanor violations arise out of the failure to properly placard vehicles carrying dangerous cargo. The use of the words

"culpable intent" in the above quotation has been relied upon by defense attorneys and to some extent by the courts as requiring the establishment of some mental element or affirmative intention to evade the law in addition to knowledge of the facts.

In *St. Johnsbury Trucking Company* v. *United States* (220 F. 2d 393), a conviction resulted after trial in the district court wherein it was shown that there was no affirmative intention to violate the regulation but that the failure to placard the motor vehicle arose because of the failure of a rating clerk to attach a warning label to the shipping document which he, in turn, passed on to the billing clerk for preparation of a freight bill and delivery receipt. Clearly, there was knowledge of the fact that (1) the vehicle was carrying 3,550 pounds of wet electric storage batteries, and (2) it was not placarded. The following statement appeared in the opinion rendered by the district court:

"Thus, considering the purposes of section 835, the particular offense requires no element of criminal intent" (*U.S.* v. *Behrman,* 258 U.S. 280; *U. S.* v. *Balint,* 258 U.S. 250).

The circuit court set aside the verdict and remanded the case, holding that the above-mentioned quotation was in conflict with the decision of the Supreme Court as quoted from the *Boyce* case. The circuit court said:

[p. 10] "This statement [of the Supreme Court] conflicts with the statement of the trial court in the instant case that '* * * the particular offense requires no element of criminal intent.' It may be true that 'culpable' and 'criminal' are not identical in meaning but it is clear that

the trial court erroneously interpreted 18 U.S.C. 835 as requiring no element of culpable or blamable intent and thus committed reversible error."

The concurring opinion of Chief Judge Magruder contains the following statements:

"If it be thought that the indicated requirement of proof will seriously hamper effective enforcement of the Interstate Commerce Commission regulations, the answer is that Congress is at liberty to fix that up by striking out from 18 U.S.C. 835 the prescribed element of mens rea—'knowingly'—as applied to violation of regulations of the sort here involved. That is to say, Congress could convert the offense into what sometimes has been called a public welfare offense, requiring no element of guilty knowledge or other specific mens rea, by providing that whoever, by himself or by agent, transports explosives, poison gas, flammable solids, or other dangerous commodities without the safeguards which may be prescribed by a lawful regulation of the Interstate Commerce Commission, shall be guilty of a public offense and subject to penalty. See the discussion in *Morissette* v. *United States* (342 U.S. 246, 252-260 (1952)).

"If a statute provides that it shall be an offense 'knowingly' to sell adulterated milk, the offense is complete if the defendant sells what he knows to be adulterated milk, even though he does not know of the existence of the criminal statute, on the time-honored principle of the criminal law that ignorance of the law is no excuse. But where a statute provides, as does 18 U.S.C. 835, that whoever knowingly violates a regulation of the Interstate Commerce Commission shall be guilty of an offense, it would seem that a person could not knowingly violate a

regulation unless he knows of the terms of the regulation and knows that what he is doing is contrary to the regulation. Here again the definition of the offense is within the control and discretion of the legislature."

The deletion of the word "knowingly" in section 835 in the interest of the greater good places the burden of acting at hazard upon a person otherwise innocent but standing in responsible relation to a public danger. Whatever the intent of the violator, the potential danger to society remains the same whether the violation is brought about by haphazard, careless conduct or whether it is prompted by an evil purpose. Mere removal of the word "knowingly" from the present wording of the statute would impose an absolute liability upon the carrier. Because of the added peril inherent in the transportation of the commodities concerned, statutory creation of an absolute liability does not seem unreasonable. However, the language recommended by the Senate Interstate and Foreign Commerce Committee in its Report No. 281, dated May 2, 1957, and substituted by the Senate in passing S. 1491 during the 1st session of the 85th Congress, has been incorporated in the attached draft bill. While the Commission is still of the view that simply deleting the word "knowingly" from this section of the statute is more desirable, it believes the substitution therefor of the words "being aware that the Interstate Commerce Commission has formulated regulations for the safe transportation of [p. 11] explosives and other dangerous articles" is a substantial improvement over the present provisions.

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 557

UNITED STATES OF AMERICA, APPELLANT

v.

INTERNATIONAL MINERALS AND CHEMICAL CORPORATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

REPLY BRIEF FOR THE UNITED STATES

Appellee correctly points out in its brief (pp. 11–12) that our opening brief mistakenly refers to a memorandum of the staff of the Department of Health, Education and Welfare as a memorandum of the staff of the House Committee on the Judiciary. It is also true that the memorandum and the letter from HEW, to which it was attached,[1] supported the original position of the Interstate Commerce Commission that the *scienter* element should be deleted entirely from 18 U.S.C. 834 in order to establish absolute liability for violation of regulations for transportation of explosives and other dangerous substances.

[1] The letter and memorandum were reprinted in the House Committee Report, H. Rep. No. 1975, 86th Cong., 2d Sess., pp. 13–19.

421-786—71

These matters are not, however, essential to our position on the legislative history of the 1960 revision of the Act. The ultimate point to be made about that legislative history is that it is neutral; the 1960 revision retained the prior framework and the prior use of the term "knowingly" and nothing said by Congress in the process indicates a legislative intent that specific knowledge of a regulation should be a prerequisite to punishment for its violation. Rather, it is clear that the intent was, as the House Committee Report stated, simply "to retain the present law." H. Rep. No. 1975, 86th Cong., 2d Sess., p. 2. And the "present law," as we have argued in our opening brief, pp. 7–14, required only proof of the traditional element of *scienter*—that the defendant was aware of the pertinent facts and intended to engage in the conduct involved.

Nor does the legislative history as a whole indicate that Congress *thought* knowledge of the regulations was required by prevailing judicial decisions. The House Committee Report noted that "[u]nder the present law there is judicial pronouncement as to the standards of conduct that make a violation a 'knowing' violation" (H. Rep. No. 1975, 86th Cong., 2d Sess., p. 2). The Report did not state that the Committee's interpretation of this "judicial pronouncement" was that knowledge of the regulations was an element of the offense. It merely asserted that the change in the *scienter* requirement proposed by the Senate—to require only a general awareness of the

existence of safety regulation—"may well create an almost absolute liability" (*ibid.*). This statement does indicate that it was the Committee's view that the proposed substitution of this requirement for "knowingly" would, as a practical matter, be nearly as effective in creating absolute liability as simply deleting the term "knowingly." It was certainly plausible to view the proposed *scienter* requirement—of general knowledge of the existence of regulations but evidently not knowledge of the facts—as less stringent than a requirement of a knowledge of the facts, but not of the regulations. Thus, the statement does not indicate that the House Committee thought that "knowingly" required knowledge of both the facts and the regulations.[2]

The comments of various governmental agencies (reprinted in the House Committee Report), which supported revision of the statute, did not reflect a unanimous view of the requirements of the present law. The Interstate Commerce Commission was concerned that the decision in *Boyce Motor Lines* v.

[2] The bill, as revised by the House Committee, passed the House on August 23, 1960 (106 Cong. Rec. 17261–17262). The Senate passed the amended House version three days later (106 Cong. Rec. 17789). Senator Magnuson, the sponsor of the original bill, urged prompt acceptance of the "minor House amendments" as an "emergency" measure to make certain that federal courts would have jurisdiction over private, as well as common, carriers. He noted several recent explosions of trucks of private carriers, one in Roseburg, Oregon, which killed 37 people. He also pointed out that a federal district court in Portland had the day before dismissed a suit which the government had filed, apparently in connection with the Roseburg disaster, for lack of jurisdiction.

United States, 342 U.S. 337, had "been relied upon by defense attorneys and to some extent by the courts as requiring the establishment of some mental element or affirmative intention to evade the law in addition to knowledge of the facts" H. Rep. No. 1975, 86th Cong., 2d Sess., p. 9. It initially sought a statute which would create absolute liability by omitting altogether any reference to intent or knowledge, whether of law or fact. It was satisfied with a revision which it believed lessened its burden in prosecution and clarified what it considered to be an uncertain state of law.

The HEW staff memorandum argued—persuasively we believe—that the existing and correct judicial interpretation of the effect of the term "knowingly" was that it required proof only of the traditional element of *scienter*. While it supported deletion of any *scienter* requirement, it viewed the burden of proof of knowledge of the existence of regulations as more burdensome than proof of factual knowledge. The staff therefore apparently felt that retention of "knowingly" in Section 834—which, it noted, was in any event to be retained in Sections 832 and 833—was preferable to substitution of the Senate version.

The significant point is thus that there was a disparity of views as to the requirements of the existing law, as well as the burden which the *scienter* requirement proposed by the Senate would impose. In this context, we submit, it is not reasonable to conclude that Congress held the inaccurate view that the present statute required proof of knowledge of the law, as well as the facts, and that it consequently intended

to endorse this interpretation by retaining the term, "knowingly." Accordingly, nothing which Congress said or did should prevent this Court from reaffirming the correct construction of the term "knowingly" as continuously used in Section 834, and reversing the judgment below.

Respectfully submitted.

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APRIL 1971.

U.S. GOVERNMENT PRINTING OFFICE: 1971

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* INTERNATIONAL MINERALS & CHEMICAL CORP.

CERTIFIED APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

No. 557. Argued April 26, 1971—Decided June 1, 1971

Appellee was charged by information with shipping sulfuric and hydrofluosilicic acids in interstate commerce and that it "did knowingly fail to show on the shipping papers the required classification of said property, to wit, Corrosive Liquid, in violation of 49 CFR 173.437," issued pursuant to 18 U. S. C. § 834 (a). Section 834 (f) provides that whoever "knowingly violates any such regulation" shall be fined and imprisoned. The District Court dismissed the information, holding that it did not charge a "knowing violation" of the regulation. *Held:* The statute does not signal an exception to the general rule that ignorance of the law is no excuse. The word "knowingly" in the statute pertains to knowledge of the facts, and where, as here, dangerous products are involved, the probability of regulation is so great that anyone who is aware that he is in possession of or dealing with them must be presumed to be aware of the regulation. Pp. 2–7.

Reversed.

DOUGLAS, J., delivered the opinion of the Court, in which BURGER, C. J., and BLACK, WHITE, MARSHALL, and BLACKMUN, JJ., joined. STEWART, J., filed a dissenting opinion, in which HARLAN and BRENNAN, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 557.—October Term, 1970

United States, Appellant, v. International Minerals & Chemical Corp.	Certified Appeal From the United States District Court for the Southern District of Ohio.

[June 1, 1971]

Mr. Justice Douglas delivered the opinion of the Court.

The information charged that appellee shipped sulfuric acid and hydrofluosilicic acid in interstate commerce and "did knowingly fail to show on the shipping papers the required classification of said property, to wit, Corrosive Liquid, in violation of 49 CFR 173.427."

18 U. S. C. § 834 (a) gives the Interstate Commerce Commission power to "formulate regulations for the safe transportation" of "corrosive liquids" and 18 U. S. C. § 834 (f) states that whoever "knowingly violates any such regulation" shall be fined or imprisoned.

Pursuant to the power granted by § 834 (a) the regulatory agency [1] promulgated the regulation already cited which reads in part:

> "Each shipper offering for transportation any hazardous material subject to the regulations in this chapter, shall describe that article on the shipping paper by the shipping name prescribed in § 172.5 of this

[1] The regulatory authority originally granted the Interstate Commerce Commission was transferred to the Department of Transportation by 80 Stat. 939, 49 U. S. C. § 1655 (e).

chapter and by the classification prescribed in § 172.4 of this chapter, and may add a further description not inconsistent therewith. Abbreviations must not be used." 49 CFR § 173.427.

The District Court relying primarily on *Boyce Motor Lines, Inc.* v. *United States*, 342 U. S. 337, ruled that the information did not charge a "knowing violation" of the regulation and accordingly dismissed the information.

The United States filed a notice of appeal to the Court of Appeals, 18 U. S. C. § 3731, and in reliance on that section later moved to certify the case to this Court which the Court of Appeals did; and we noted probable jurisdiction, 400 U. S. 990.

Here as in *United States* v. *Freed*, — U. S. —, which dealt with the possession of hand grenades, strict or absolute liability is not imposed; knowledge of the shipment of the dangerous materials is required. The sole and narrow question is whether "knowledge" of the regulation is also required. It is in that narrow zone that the issue of *"mens rea"* is raised; and appellee bears down hard on the provision in 18 U. S. C. § 834 (f) that whoever "knowingly violates any such regulation" shall be fined, etc.

Boyce Motor Lines, Inc. v. *United States*, 342 U. S. 337, on which the District Court relied is not dispositive of the issue. It involved a regulation governing transporting explosive, inflammable liquid, and the like and required drivers to "avoid, so far as practicable, and, where feasible, by prearrangement of routes, driving into or through congested thoroughfares, places where crowds are assembled, streetcar tracks, terminals, viaducts, and dangerous crossings." The statute punished whoever "knowingly" violated the regulation. *Id.*, at 339. The issue of *"mens rea"* was not raised below, the sole question turning on whether the standard of guilt was uncon-

stitutionally vague. *Id.*, at 340. In holding the statute was not void for vagueness we said:

> "The statute punishes only those who knowingly violate the Regulation. This requirement of the presence of culpable intent as a necessary element of the offense does much to destroy any force in the argument that application of the Regulation would be so unfair that it must be held invalid. That is evident from a consideration of the effect of the requirement in this case. To sustain a conviction, the Government not only must prove that petitioner could have taken another route which was both commercially practicable and appreciably safer (in its avoidance of crowded thoroughfares, etc.) than the one it did follow. It must also be shown that petitioner knew that there was such a practicable, safer route and yet deliberately took the more dangerous route through the tunnel, or that petitioner willfully neglected to exercise its duty under the Regulation to inquire into the availability of such an alternative route.
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> "In an effort to give point to its argument, petitioner asserts that there was no practicable route its truck might have followed which did not pass through places they were required to avoid. If it is true that in the congestion surrounding the lower Hudson there was no practicable way of crossing the River which would have avoided such points of danger to a substantially greater extent than the route taken, then petitioner has not violated the Regulation. But that is plainly a matter for proof at the trial. We are not so conversant with all the routes in that area that we may, with no facts in the record before us, assume the allegations of the indictment to be false. We will not thus distort the judicial notice concept to strike down a regula-

tion adopted only after much consultation with those affected and penalizing only those who knowingly violate its prohibition." *Id.*, at 342–343.

The "*mens rea*" that emerged in the foregoing discussion was not knowledge of the regulation but knowledge of the more safe and the less safe routes within the meaning of the regulation. Mr. Justice Jackson, writing in dissent for himself, and MR. JUSTICE BLACK and Mr. Justice Frankfurter correctly said:

> "I do not suppose the Court intends to suggest that if petitioner knew nothing of the existence of such a regulation, its ignorance would constitute a defense." 342 U. S., at 345.

There is no issue in the present case of the propriety of the delegation of the power to establish regulations and of the validity of the regulation at issue. We therefore see no reason why the word "regulations" should not be construed as a shorthand designation for specific acts or omissions which violate the Act. The Act, so viewed, does not signal an exception to the rule that ignorance of the law is no excuse and is wholly consistent with the legislative history.

The failure to change the language in § 834 in 1960 should not lead to a contrary conclusion. The Senate approved an amendment deleting "knowingly" and substituting therefor the language "being aware that the Interstate Commerce Commission has formulated regulations for the safe transportation of explosives and other dangerous articles." [2] But the House refused to agree. As the House Committee stated, its version would "retain present law by providing that a person must 'knowingly' violate the regulations." [3]

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[2] See H. Rep. No. 1975, 86th Cong., 2d Sess., at 10–11.
[3] *Id.*, at 2.

The House Committee noted there was a "judicial pronouncement as to the standards of conduct that make a violation a 'knowing' violation."[4] In *St. Johnsbury Trucking Co.* v. *United States*, 220 F. 2d 393, 397, Chief Judge Magruder had concluded that knowledge of the regulations was necessary. But whether the House Committee was referring to *Boyce Motor Lines* or the opinion of Chief Judge Magruder is not clear since both views of the section were before Congress.[5] It is clear that strict liability was not intended. The Senate Committee felt it would be too stringent and thus rejected the position of the Interstate Commerce Commission.[6] But despite protestations of avoiding strict liability the Senate version was very likely to result in strict liability because knowledge of the facts would have been unnecessary and anyone involved in the business of shipping dangerous materials would very likely know of the regulations involved. Thus in rejecting the Senate version the House was rejecting strict liability.[7] But it is too much to conclude that in rejecting strict liability the House was also carving out an exception to the general rule that ignorance of the law is no excuse.

The principle that ignorance of the law is no defense, applies whether the law be a statute or a duly promulgated and published regulation. In the context of these 1960 amendments we decline to attribute to Congress the inaccurate view that that Act requires proof of knowledge of the law, as well as the facts, and intended to endorse that interpretation by retaining the word "knowingly." We conclude that the meager legislative history of the 1960 amendments makes unwarranted the conclusion that

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[4] *Ibid.*

[5] See the HEW Staff Memorandum, *id.*, at 16–19.

[6] S. Rep. No. 901, 86th Cong., 1st Sess., at 3.

[7] The Senate language might "well create an almost absolute liability for violation." H. Rep. No. 1975, at 3.

Congress abandoned the general rule and required knowledge of both the facts and the pertinent law before a criminal conviction could be sustained under this Act.

So far as possession, say, of sulfuric acid is concerned the requirement of *"mens rea"* has been made a requirement of the Act as evidenced by the use of the word "knowingly." A person thinking in good faith that he was shipping distilled water when in fact he was shipping some dangerous acid would not be covered. As stated in *Morissette* v. *United States*, 342 U. S. 246, 250:

> "The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil."

There is leeway for the exercise of congressional discretion in applying the reach of *"mens rea."* *United States* v. *Balint*, 258 U. S. 250. *United States* v. *Murdock*, 290 U. S. 389, closely confined the word "wilfully" in the income tax law to include a purpose to bring about the forbidden result:

> ". . . He whose conduct is defined as criminal is one who *'willfully'* fails to pay the tax, to make a return, to keep the required records, or to supply the needed information. Congress did not intend that a person, by reason of a bona fide misunderstanding as to his liability for the tax, as to his duty to make a return, or as to the adequacy of the records he maintained, should become a criminal by his mere failure to measure up to the prescribed standard of conduct. And the requirement that the omission in these instances, must be willful, to be criminal, is persuasive that the same element is

essential to the offense of failing to supply information." *Id.*, at 396.

In *Balint* the Court was dealing with drugs, in *Freed* with hand grenades, in this case with sulfuric and other dangerous acids. Pencils, dental floss, paper clips may also be regulated. But they may be the type of products which might raise substantial due process questions if Congress did not require, as in *Murdock*, "*mens rea*" as to each ingredient of the offense. But where, as here and as in *Balint* and *Freed*, dangerous or deleterious devices or products or obnoxious waste materials are involved, the probability of regulation is so great that anyone who is aware that he is in possession of them or dealing with them must be presumed to be aware of the regulation.

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 557.—October Term, 1970

United States, Appellant, v. International Minerals & Chemical Corp.	Certified Appeal From the United States District Court for the Southern District of Ohio.

[June 1, 1971]

Mr. Justice Stewart, with whom Mr. Justice Harlan and Mr. Justice Brennan join, dissenting.

This case stirs large questions—questions that go to the moral foundations of the criminal law. Whether postulated as a problem of *"mens rea,"* of "willfulness," of "criminal responsibility," or of *"scienter,"* the infliction of criminal punishment upon the unaware has long troubled the fair administration of justice. See, *e. g.*, *Morissette* v. *United States*, 342 U. S. 246; *Lambert* v. *California*, 355 U. S. 225; *Scales* v. *United States*, 367 U. S. 203. Cf. *Durham* v. *United States*, 214 F. 2d 862. But there is no occasion here for involvement with this root problem of criminal jurisprudence, for it is evident to me that Congress made punishable only knowing violations of the regulation in question. That is what the law quite clearly says, what the federal courts have held, and what the legislative history confirms.

The statutory language is hardly complex. Section 834 (a) of Title 18, U. S. C., gives the regulatory agency power "to formulate regulations for the safe transportation of," among other things, "corrosive liquids." Section 843 (f) provides that "[w]hoever knowingly violates any such regulation shall be fined not more than $1,000.00 or imprisoned not more than one year, or both." In dismissing the information in this case because it did not charge the appellee shipper with knowing violation of

the applicable labeling regulation, District Judge Porter did no more than give effect to the ordinary meaning of the English language.

It is true, as the Court today points out, that the issue now before us was not directly involved in *Boyce Motor Lines, Inc.* v. *United States*, 342 U. S. 337, which dealt with a claim that the statute is unconstitutionally vague. But in holding the statute valid, the Court bottomed its reasoning upon the proposition that "the presence of culpable intent [is] a necessary element of the offense." *Id.*, at 342. Other federal courts, faced with the precise issue here presented, have held that the statute means exactly what it says—that the words "knowingly violates any such regulation" mean no more and no less than "knowingly violates any such regulation." *St. Johnsbury Trucking Co.* v. *United States*, 220 F. 2d 393 (CA1 1955); *United States* v. *Chicago Express*, 235 F. 2d 785 (CA7 1956). Chief Judge Magruder filed a concurring opinion in the *St. Johnsbury* case, and he put the matter thus:

> "If it be thought that the indicated requirement of proof will seriously hamper effective enforcement of the Interstate Commerce Commission regulations, the answer is that Congress is at liberty to fix that up by striking out . . . the prescribed element of *mens rea*—'knowingly'—as applied to violation of regulations of the sort here involved.
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> . . . . . .
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> "If a statute provides that it shall be an offense 'knowingly' to sell adulterated milk, the offense is complete if the defendant sells what he knows to be adulterated milk, even though he does not know of the existence of the criminal statute, on the time-honored principle of the criminal law that ignorance

> of the law is no excuse. But where a statute provides, as does 18 U. S. C. § 835, that whoever knowingly violates a regulation of the Interstate Commerce Commission shall be guilty of an offense, it would seem that a person could not knowingly violate a regulation unless he knows of the terms of the regulation and knows that what he is doing is contrary to the regulation. Here again the definition of the offense is within the control and discretion of the legislature." *Id.*, at 398.

In 1960 these judicial decisions were brought to the attention of the appropriate committees of Congress by the Interstate Commerce Commission, which asked Congress to overcome their impact by amending the law, either by simply deleting the word "knowingly" or, alternatively, by substituting therefor the words "being aware that the Interstate Commerce Commission has formulated regulations for the safe transportation of explosives and other dangerous articles."[1] The Senate passed a bill adopting the second alternative, based on a committee report that stated:

> "Prosecution for violations of the Commission's transportation of explosives regulations has been extremely difficult because of the requirement in section 835 of the act that violators must have knowledge that they violated the Commission's regulations. While the committee believes that every reasonable precaution should be taken to provide for punishing those violating a statute whose purpose is to promote safety, the creation of an absolute liability is deemed too stringent."[2]

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[1] See H. Rep. No. 1975, 86th Cong., 2d Sess., pp. 9–11.

[2] S. Rep. No. 901, 86th Cong., 1st Sess., pp. 2–3.

The House, however, refused to accept the Senate's language and resubstituted the word "knowingly," its committee report stating:

> "The present Transportation and Explosives Act requires that a violation 'knowingly' be committed before penalty may be inflicted for such violation. Under the present law there is judicial pronouncement as to the standards of conduct that make a violation a 'knowing' violation. The instant bill would change substantially the quantum of proof necessary to prove a violation since it provides that 'any person who being aware that the Interstate Commerce Commission has formulated regulations for the safe transportation of explosives and other dangerous articles' is guilty if there is a noncompliance with the regulations. Such language may well create an almost absolute liability for violation. . . . Since the penalties prescribed for violation of the Explosives Act are substantial and since proof required to sustain a charge of violation of such regulations under the bill would require little more than proof that the violation occurred, it is the considered opinion of the committee that such a substantial departure in present law is not warranted. It is the purpose of this amendment to retain the present law by providing that a person must 'knowingly' violate the regulations." [3]

Three days later the Senate agreed to the resubstitution of the word "knowingly" by passing the House version of the bill.

The Court today thus grants to the Executive Branch what Congress explicitly refused to grant in 1960. It effectively deletes the word "knowingly" from the law. I cannot join the Court in this exercise, requiring as it

[3] H. Rep. No. 1975, 86th Cong., 2d Sess., p. 2.

does such a total disregard of plain statutory language, established judicial precedent, and explicit legislative history.

A final word is in order. Today's decision will have little practical impact upon the prosecution of interstate motor carriers or institutional shippers. For interstate motor carriers are members of a regulated industry, and their officers, agents, and employees are required by law to be conversant with the regulations in question.[4] As a practical matter, therefore, they are under a species of absolute liability for violation of the regulations despite the "knowingly" requirement. This, no doubt, is as Congress intended it to be. Cf. *United States* v. *Dotterweich*, 320 U. S. 277; *United States* v. *Balint*, 258 U. S. 250. Likewise, prosecution of regular shippers for violations of the regulations could hardly be impeded by the "knowingly" requirement, for triers of fact would have no difficulty whatever in inferring knowledge on the part of those whose business it is to know, despite their protestations to the contrary. The only real impact of this decision will be upon the casual shipper, who might be any man, woman, or child in the Nation. A person who had never heard of the regulation might make a single shipment of an article covered by it in the course of a lifetime. It would be wholly natural for him to assume that he could deliver the article to the common carrier and depend upon the carrier to see that it was properly labeled and that the shipping papers were in order. Yet today's decision holds that a person who does just that is guilty of a criminal offense punishable by a year in prison. This seems to me a perversion of the purpose of criminal law.

I respectfully dissent from the opinion and judgment of the Court.

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[4] 49 CFR § 397.02.